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PROJECT ON NATIONAL SECURITY REFORM

CASE STUDIES VOLUME I

RICHARD WEITZ, EDITOR



TRANSFORMING GOVERNMENT
FOR THE 21ST CENTURY

DEALING WITH EMERGING POWERS

CHAPTER 4. U.S.-INDIA CIVIL NUCLEAR COOPERATION AGREEMENT

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Introduction

The proposed U.S.-Indian civil nuclear cooperation agreement is important to the Project on National Security Reform (PNSR) because it represents a transformation in American nuclear nonproliferation policy. This policy change resulted from a new U.S. strategic vision selected to reflect a rapidly changing global security environment. By investigating the policy shift and security-policy dynamic, this case study illustrates the challenges of adjusting long-standing guidelines to suit new strategic frameworks. It also offers insight for future occasions in which broader strategic ties and policy aims transcend traditional security concerns. The key issue of the proposed U.S.-India nuclear deal—balancing nonproliferation goals with other foreign policy objectives—is one that will remain relevant with respect to India even if the nuclear agreement falls through. Indeed, New Delhi's gradual emergence as a global power and status as the world's largest practicing democracy ensures that

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the United States will have lasting geopolitical interests in the Indian sub-continent. The U.S. government will be forced to integrate these geopolitical concerns into its future nonproliferation strategies.

The evolution of U.S.-Indian relations within a nuclear context is ultimately a study of executive control over national security issues, and demonstrates the effects of reoriented presidential priorities on international regimes, government agencies, and policies. The George W. Bush administration's decision to negotiate a civil nuclear cooperation deal with India concluded nearly three decades of nuclear isolation for the subcontinent following India's 1974 nuclear test. After India joined the nuclear club, relations with the U.S. remained weak and often antagonistic. Former President Bill Clinton's 2000 trip to New Delhi marked both the first visit by an American president in 22 years, and the beginning of friendlier U.S.-Indian relations. Determined to solidify these ties, the Bush administration proposed a nuclear cooperation agreement between the two countries in 2005.

President Bush and Indian Prime Minister Manmohan Singh worked out the terms of this proposal; however, before a formal agreement could be negotiated, U.S. laws had to be adjusted to allow for the possibility of nuclear commerce with India. Congress revised relevant legislation in 2006, but required the Bush-Singh proposal to meet new conditions which called for renegotiation of the accord. Though the text of the final agreement was released in 2007, it will not go into effect until the administration successfully resubmits it to Congress for approval in late 2008. In the meantime, the American and Indian governments are working to address congressional requirements for nuclear trade.

Outline

This case examines the workings of the U.S. nonproliferation policy shift toward India. As the initiative is relatively recent, extensive information is not yet publicly available and limited secondary research exists. Thus, the study relies on information from a variety of U.S. and international political and diplomatic correspondents, scrutiny from nonproliferation and arms control experts, as well as testimony and reports from relevant congressional hearings, press conference transcripts, and releases (and an individual first-hand account), to construct a solid picture of events for analysis. First,

the case relates background developments affecting U.S.-Indian bilateral relations and describes the basis for prior American nuclear export policies. Next, the study discusses the overall coherency of previous nonproliferation policy and the mechanisms that strengthened it. Then, the text investigates the foundation and effects of Bush administration policy on U.S. laws and the international nonproliferation regime. Overall, the case study endeavors to analyze strategy in light of four key questions that assess U.S. government decision making:

1. Did the U.S. government generally act in an *ad hoc* manner or did it develop effective strategies to integrate its national security resources?
2. How well did the agencies and departments work together to implement these *ad hoc* or integrated strategies?
3. What variables explain the strengths and weaknesses of the response?
4. What diplomatic, financial, and other achievements and costs resulted from these successes and failures?

Brief answers to each of these questions are as follows:

1. Under the George W. Bush administration, the U.S. government's decision-making process moved away from a coherent strategy based on nonproliferation toward an *ad hoc*, White House-dominated approach that circumvented the interagency process.
2. The success of this *ad hoc* strategy has been limited because it was tied to a coherent, rule-based strategic context and changes at a domestic level were not coordinated with parallel regulatory shifts at an international level. The administration's strategy gained begrudging and limited cooperation from Congress, and failed to win over the deal's opponents with terms that were palatable to both U.S. lawmakers and New Delhi.
3. The flaws of the U.S. government approach, the resulting agreement, and much of the ensuing controversy over the

nuclear accord can be traced to unilateral and unanalyzed White House decision making. This approach characterized not only the administration's dealings with Congress, but U.S. government negotiations with New Delhi over the terms of cooperation, as well.

4. One achievement of the administration's approach is that the nuclear agreement with India advanced quickly, allowing for much to be accomplished within a relatively brief period of time. However, a critical cost of the administration's strategy may be disintegration of the nuclear deal itself, which must still navigate substantial U.S., Indian, and international hurdles before it goes into effect. This might have been more easily avoided had the administration employed a different approach toward implementing U.S.-Indian civil nuclear cooperation.

Background on U.S. Nonproliferation Policy

There are three distinct eras in the history of U.S. nonproliferation policy: secrecy and monopoly in 1945, the promotion of atomic energy for civilian use in the 1950s and 1960s, and technology controls from the mid-1970s to roughly present day.²⁶² As the first country to apply atomic power, the United States government initially wanted simply to maintain dominance in this new field. The Atomic Energy Act (AEA) passed by Congress in 1946 created the Atomic Energy Commission (AEC), whose purpose was to safeguard nuclear materials and facilities placed under civilian control after the end of World War II. The commission did this by creating licenses for nuclear materials in order to monitor their transfer and to ensure that fissile materials were not being diverted from government programs and facilities.

The AEC was an executive agency with authority to supervise all activities pertaining to atomic energy development. The commission exercised expansive policy control, and an overseeing body was

262 William Potter, "India and the New Look of U.S. Nonproliferation Policy," *The Nonproliferation Review* 12.2 (Jul. 2005): 344, 18 May 2008, available at <http://cns.miis.edu/pubs/npr/vol12/122/122potter.pdf>.

created and significantly empowered to check the AEC's otherwise unchallenged influence in atomic energy. The Atomic Energy Act created this supervisory organization, which was known as the Joint Committee for Atomic Energy (JCAE). The JCAE was comprised of 18 members of the House and Senate, and was charged with "continuing studies of the activities" of the AEC, which in turn was required to keep the committee "fully and currently informed" of its actions.²⁶³ In practice, members of congressional committees most acquainted with atomic energy matters (such as the Committees on Foreign Relations and Armed Services from both houses) were appointed to the JCAE.²⁶⁴ Consequently, committee members tended to be both knowledgeable about, and interested in, furthering the nation's atomic energy program.

By the mid-1950s, the international climate had changed. It became obvious that atomic energy was a dual-use technology, which could constitute a threat to international security in the form of a potential Soviet arsenal, or provide the basis for peaceful civilian and commercial nuclear power facilities. To encourage the latter, the United States created the Atoms for Peace program which called on members of the United Nations to cooperate in developing civilian applications for atomic energy. Atoms for Peace envisioned nuclear commerce between states for friendly, pacific, development purposes. Additionally, the AEA was amended in 1954 to allow industrial nuclear energy development, and the AEC established new licensing requirements for non-governmental entities that intended to own or operate nuclear power facilities.

Congress expanded the powers of the JCAE, a body which enjoyed an unusually close relationship with the executive branch, around this time as well.²⁶⁵ The National Commission on Terrorist Attacks upon the United States (also known as the "9/11 Commission")

263 See Section 1(a) of the 1946 Atomic Energy Act (AEA), 18 Aug. 2008, available at http://www.sc.doe.gov/bes/Atomic_Energy_Act_of_1946.pdf.

264 Christopher M. Davis, *9/11 Commission Recommendations: Joint Committee on Atomic Energy -- a Model for Congressional Oversight?* CRS Report for Congress, (Washington, D.C.: The Library of Congress, 20 Aug. 2004) 10, 25 Apr. 2008, available at <http://www.fas.org/irp/crs/RL32538.pdf>.

265 See Section 1(a) of the 1946 AEA.

investigated this relationship and elaborated on the JCAE's unprecedented powers, noting that the committee filled both an oversight and legislative role. This unusual combination of functions "essentially preempted all other committees, except the Committee on Appropriations, from the items of JCAE's jurisdiction."²⁶⁶ Jurisdiction included the activities and responsibilities of the Department of Defense (DOD), and all other federal agencies involved in "the development, utilization or application of atomic energy."²⁶⁷ In short, the JCAE was granted expansive control and exclusive oversight over all "bills, resolutions and other matters... relating primarily to the Commission or to the development, use and control of atomic energy."²⁶⁸

Conforming to this authority, the Pentagon provided information to the JCAE, as did the Senate and the House of Representatives. In return, the committee was required to report periodically to each congressional house, "by bill or otherwise," with recommendations on matters under their jurisdiction.²⁶⁹ In order to be "fully and completely informed" of AEC and relevant DOD activities, the committee had exclusive access to restricted information not available to any other congressional committee. It "jealously guarded that information [which] gave the committee tremendous power in its area of expertise."²⁷⁰ Generally, the JCAE's recommendations to the House and Senate were adopted with little disagreement, and rarely was a conference committee required to resolve differences between congressional houses.²⁷¹

This authority allowed the committee to oversee the activities of the Atomic Energy Commission and other departments in real time. It also positioned the JCAE alongside the executive branch as a co-decision maker, directing policy conceptualization instead of merely overseeing its implementation. Through the JCAE, Congress was able to review, influence, and even restrain the actions of a powerful

266 Davis, 14.

267 Cited in Davis, 16.

268 See Section 15(b) of the 1946 AEA.

269 Ibid.

270 Davis, 3.

271 Davis, 14.

executive commission (the AEC) that controlled development of the nation's atomic energy program.

The Joint Committee also had the power of legislative (or congressional) veto, under which congressional disapproval resolutions could nullify executive branch decisions. The committee used this veto to shape policy.²⁷² Beginning in 1951, Congress determined that certain dealings of the AEC—the classification of atomic data, the sharing of restricted atomic energy-related information with other countries, and nuclear cooperation agreements, for example—must “lie before the joint committee” for thirty days, during which time the JCAE could evoke its veto power.²⁷³ The thirty-day review period afforded the committee an opportunity to influence policy direction, which frequently reflected the body's “unswerving dedication to the development of nuclear power.”²⁷⁴ Often there was little need for the committee to resort to a legislative veto. According to the 9/11 Commission, “due to the close relationship between the JCAE and the AEC, and their roles as ‘co-decision makers,’ the joint panel often got its way.”²⁷⁵

The influence of the committee's legislative veto was of sufficient import that thirty-two years later, the U.S. Supreme Court would find in *INS vs. Chadha*, 1983—a case unrelated to nuclear activities—that a congressional veto by resolution of one or both houses was unconstitutional.²⁷⁶ By then, the AEC and the JCAE had been disbanded by the Energy Reorganization Act (ERA) of 1974. Nevertheless, the years immediately following the 1954 Atomic Energy Act amendments were marked by a powerful, unconventional committee that relied on comprehensive access to information through referral and oversight functions, instead of legislative

272 The congressional veto first appeared in U.S. government during the 1930s when it was used by the legislative branch of government to challenge some actions of the executive branch, such as the reorganization of government agencies. The veto was first authorized by the Reorganization Act of 1939, and reappeared as a provision within legislation over two hundred times in the next half a century. Congress enacted this provision in 1951.

273 Davis, 19.

274 Davis, 17.

275 Davis, 20.

276 See *INS V. Chadha*, no. 80-1832, U.S. Supreme Court, 23 June 1983.

ability, to participate in executive policy-making deliberations and implementation.²⁷⁷ The JCAE used its considerable powers and executive access to influence the direction of nuclear policies, and to institute and protect the programs it believed “vital to the national interest,” even in the face of executive opposition.²⁷⁸ The nation’s atomic energy program developed robustly as a result.

International Organization: The Nuclear Non-Proliferation Treaty (NPT) and the Nuclear Suppliers Group (NSG)

As the American atomic energy program began to expand domestically, an increasing number of countries became interested in the development and uses of nuclear power. As a result, international discussions began on how to prevent the misuse of atomic energy. In 1967, the United Nations General Assembly approved the Nuclear Non-Proliferation Treaty (NPT), which sought to limit the spread of nuclear weapons through nonproliferation, disarmament, and peaceful nuclear cooperation incentives.²⁷⁹ The NPT was an addition to the existing international nonproliferation regime that had been established by the United States largely through the Atoms for Peace program. The ideas that formed the basis of the NPT originated from the U.N. General Assembly as a 1961 consensus Irish resolution.²⁸⁰ The U.S. proposed drafting a treaty for disarmament with the Soviet Union based on the Irish resolution and negotiations for a formal nonproliferation treaty began, expanding to include other important nuclear and non-nuclear governments.²⁸¹ The NPT defined five countries as nuclear weapons states: the United States, the United Kingdom, China, France, and the Soviet Union. Each of these nations had developed or acquired nuclear weapons before 1967. All other parties to the treaty were called non-nuclear weapons states

277 Davis, 24.

278 Ibid.

279 For complete text of treaty, see International Atomic Energy Agency (IAEA), Information Circular, *Treaty on the Non-Proliferation on Nuclear Weapons*, 22 Apr. 1970, 15 May 2008, available at <http://www.iaea.org/Publications/Documents/Infcircs/Others/infcircl40.pdf>.

280 George Bunn, “The Nuclear Nonproliferation Treaty: History and Current Problems,” *Arms Control Today*, Dec. 2003, 10 May 2008, available at http://www.armscontrol.org/act/2003_12/Bunn.asp#notes6.

281 Ibid.

(NNWS). The treaty prohibited the five nuclear weapons states from transferring nuclear weapons to NNWS, and obligated the nuclear weapons countries to negotiate disarmament amongst themselves. Non-nuclear parties to the treaty agreed not to receive nuclear weapons or explosives from any source or to manufacture these items indigenously. In return, nuclear weapons states would transfer nuclear technologies to NNWS to help them develop their own atomic energy programs for strictly peaceful purposes. To verify that nuclear energy and technologies were not being diverted into weapons programs, NNWS agreed to accept safeguards from a monitoring body, the International Atomic Energy Agency (IAEA). The NPT also set up a Nuclear Exporters Committee, otherwise known as the Zangger Committee, to maintain a so-called Trigger List of items that could only be exported if the receiving facility was outfitted with safeguards. The NPT went into effect in 1970. Today, only four countries remain outside the NPT framework: North Korea, Israel, Pakistan, and India.

In 1963, a few years prior to the final drafting of the NPT, the United States and India signed a bilateral agreement to promote nuclear commerce. Washington provided New Delhi with two commercially popular light water reactors and agreed to sell India enriched uranium the reactors needed for fuel. The two countries agreed that upon joint determination, spent fuel could be reprocessed in Indian facilities so that more energy could be extracted.

Though India had participated in negotiating the terms of the NPT, Indian diplomats protested the treaty on the grounds of discrimination against countries that might develop nuclear weapons after 1967. India felt that the NPT created a privileged group of 1960s-era nuclear “haves,” against whom all other states were “have-nots.”²⁸² Consequently, New Delhi refused to sign the NPT. However, the U.S.-Indian bilateral agreement remained intact, as Article IV of the NPT recognizes the inalienable right of sovereign states to engage in peaceful nuclear energy development.

282 For a more detailed discussion see Munish Puri, “India and the NPT – A Nuclear Existential Dilemma,” *Institute of Peace and Conflict Studies*, 6 May 2005, 2 June 2008, available at <http://www.ipcs.org/printArticle.jsp?kValue=1731>.

After India's 1974 nuclear test, the international community became convinced that non-weapons specific items—the kind that had been available to India and which are otherwise known as dual-use items—could lead to weapons development. (If an item has a dual-use, it can be applied to both civilian and military purposes.) To discourage the improper exploitation of dual-use materials, the U.S. implemented greater restrictions on nuclear trade. In direct response to the Indian nuclear test, the United States formed the Nuclear Suppliers Group (NSG) which today is an international 45-member body.²⁸³ The six other founding members of the NSG were Canada, France, Germany, Japan, the Soviet Union, and the United Kingdom. The group formally coordinated individual nuclear-related export policies and strengthened safeguards on existing nuclear materials. In supporting the NSG, the U.S. government (and other founding nations) hoped that the body would help bring non-NPT states under the umbrella of an international nuclear export regime. The group used what was essentially a reformulated Trigger List to identify items that could only be exported to non-nuclear states (including states not party to the NPT) if IAEA safeguards or some other exceptional safety agreement were in place. Unlike the Zangger Committee, NSG members are legally bound by the group's guidelines.

From 1978–1990, the NSG was relatively inactive and nuclear export policies remained unchanged. Tadeusz Strulak, Chairman of the NSG's 1992 meeting, attributes this inertia to “the unwillingness of some” supplier countries to move beyond the export guidelines established in 1977.²⁸⁴ However, the group began to meet regularly at the close of the Cold War and the beginning of the Gulf War. In 1992, under pressure from the United States, the NSG adopted a full-scope safeguards requirement as a condition for nuclear export. A 1995 Non-Proliferation Treaty review and extension conference saw all NPT party states endorse the principle of mandatory full-scope safeguards, thus making it a global norm for nuclear supply.

283 For a history of the NSG, see Tadeusz Strulak, “The Nuclear Suppliers Group,” *The Nonproliferation Review* 1, (1993): 2-10, 2 July 2008, available at <http://cns.miis.edu/pubs/npr/vol01/11/strula11.pdf>.

284 Strulak, 3.

Domestic Organization: The Energy Reorganization Act (ERA) and Nuclear Non-Proliferation Act (NNPA)

As the scope of nuclear technology applications and atomic energy activities expanded rapidly in the 1960s and 1970s (a full-fledged U.S. commercial nuclear industry had only just emerged as a possibility on account of recent legislation that allowed for private ownership, as opposed to government leasing, of nuclear materials),²⁸⁵ the Atomic Energy Commission faced growing criticism. This censure centered on the fact that the agency regulated the same energy source it had helped to develop and operate.²⁸⁶ Doubts emerged as to the ability of a single agency to regulate all aspects of nuclear power. In 1974, President Gerald Ford signed the Energy Reorganization Act (ERA) which addressed this conflict of interest by abolishing the Atomic Energy Commission along with its overseeing body, the JCAE. In its place, the ERA created the Energy Research and Development Administration (ERDA) and the Nuclear Regulatory Commission (NRC). Shortly thereafter, President Jimmy Carter's Department of Energy Organization Act of 1977 dismantled ERDA and replaced it with the Department of Energy (DOE).

Since 1977, the NRC has been responsible for regulating nuclear power, while the DOE has been tasked with atomic energy research and development. In order for matter to be classified as atomic, it must be determined as such by the president and Congress in writing.²⁸⁷ The ERA placed these agencies under the jurisdiction of now-separate House and Senate atomic energy committees and required both the secretary of energy and the NRC, along with the Departments of State and Defense, to "fully and currently" inform these committees of any activities pertaining to and involving the development of nuclear energy.²⁸⁸ In order to distribute atomic matter

285 Alice L. Buck, United States, Executive Secretariat, Department of Energy, *A History of the Atomic Energy Commission* (Washington: GPO, 1983) 5, 2 Jun. 2008, available at <http://www.atomictraveler.com/HistoryofAEC.pdf>.

286 Buck, 7.

287 See Section 51 of United States, General Consul, Nuclear Regulatory Commission (NRC), *Nuclear Regulatory Legislation*, 109th Cong., 2nd session, Vol. 1, No. 7, Rev. 1 (Washington: GPO, 2006), 2 June 2008, available at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0980/rev1/vol-1-sec-1.pdf>.

288 See Section 303 of ---, ---, ---, *Nuclear Regulatory Legislation*.

and related technologies, the DOE must have an NRC-issued license. Once the DOE consults the NRC and obtains concurrence from the Departments of Defense and State, the NRC will issue the requested export license.²⁸⁹ No export license for atomic materials and related technologies can be granted without executive approval.

Along with other relevant executive agencies, the new NRC and DOE collectively assumed the role of the now-defunct AEC in determining U.S. nuclear export policies. Under this system, the transfer of sensitive materials and technologies to other nations, groups of nations, or regional defense bodies is accomplished through a bilateral agreement on the conditions of trade. In addition to receiving executive approval, nuclear cooperation agreements must meet a list of criteria outlined in Section 123 of the AEA (as such, cooperation accords are dubbed “123 Agreements”). Their terms are negotiated by the secretary of state, along with the “technical assistance and concurrence” of the secretary of energy, and the language of any agreement is reviewed by the NRC.²⁹⁰ Following presidential approval, the proposed accord is submitted to relevant congressional committees.

The House Committee on Foreign Affairs and the Senate Committee on Foreign Relations may hold hearings on the proposed cooperation agreement for a period of sixty days. During these sessions, the NRC and the Departments of State, Energy, and Defense must “promptly furnish” the committees with their views on the terms of the proposal.²⁹¹ Once sixty days have passed, the committees will recommend a course of action to their respective bodies. The agreement will then come into force automatically unless Congress passes a joint resolution stating that it does not favor the proposal. The president has limited authority to forgo some Section 123 requirements, but if substantial stipulations have been waived by the executive, the agreement will not come into force until Congress passes a joint resolution favoring the proposal. In this manner, an agreement that does not meet Section 123 criteria is still subject to congressional review, during which time Congress may condition its approval of the accord.

289 Section 111b, *Ibid.*

290 Section 123(9)a, *Ibid.*

291 Section 123(9)d, *Ibid.*

In the years following the ERA, the market for international nuclear commerce had grown and after the Indian nuclear test, American policy makers realized that even if the U.S. did not export enriched uranium to India, other countries soon could and would. To discourage such a development, Congress passed the 1978 Nuclear Non-Proliferation Act (NNPA) after President Carter took office and ordered a review of U.S. nonproliferation policy.²⁹² Similar to what the NSG had accomplished among countries, the NNPA coordinated various U.S. government departments by mandating stringent export criteria in order to unify U.S. nuclear export policies and to strengthen the guarantee that receiving countries were not diverting fissionable materials for non-peaceful purposes.

Under the Nuclear Non-Proliferation Act, the Nuclear Regulatory Commission is responsible for verifying that U.S.-supplied nuclear fuel intended for peaceful nuclear development is not diverted into weapons programs or proliferated. Severe new NNPA standards for bilateral agreements insisted that the United States retain veto authority over third-party reprocessing of any U.S.-origin spent fuel. This was viewed as critical to non-proliferation since one way of creating fissionable material is through reprocessing, whereby more uranium fuel can be extracted from spent stores and additional (and potentially unaccounted for) plutonium is created as a procedural byproduct. Plutonium is strictly regulated in the United States—not only as an inherently dangerous item, but because it can be directly applied to the manufacture of nuclear weapons.²⁹³

Under the Nuclear Non-Proliferation Act, a state must have full-scope IAEA safeguards in place on all nuclear facilities, sensitive materials, and technologies regardless of their origin in order to receive U.S. nuclear deliveries. This means that if a country wants

292 George Perkovich, *India's Nuclear Bomb: the Impact on Global Nonproliferation* (Berkeley: University of California Press, 1999) 206.

293 Plutonium is sometimes referred to as “bad to the bone”—a reference to its ability to permanently attach to the skeleton, irradiating bone marrow which produces blood cells. Despite the fact that it is one of the most restricted substances in the world, plutonium is considered optimal for nuclear weapons production partly because unlike uranium, the element need not undergo enrichment in order to be useful.

to purchase nuclear fuel from the United States, it has to have full-scope safeguards in place even if it also imports such items from another country that might not require them, and even if a facility does not receive transfers directly from the United States. Finally, the NNPA disallows nuclear cooperation agreements with countries that have conducted nuclear tests or engaged in proliferation-related activities. In such an event, the NNPA stipulates that all previously exported items return to the United States, and the bilateral agreement automatically terminate. All of these provisions provide incentives for non-NPT parties to join the treaty and disarm in order to access U.S. nuclear supplies.

The NNPA gave Congress more authority to formulate U.S. nonproliferation policy by allowing it to mandate the renegotiation of existing bilateral nuclear cooperation agreements. It also kept Congress better informed of executive actions by requiring annual reports on the state of U.S. nonproliferation objectives and the previous years' policy history. As such, Congress deliberately created a role for itself that claimed a greater measure of influence over the direction of U.S. nonproliferation policy. Meanwhile, from 1978 onward, nonproliferation advanced as a key priority of Washington's foreign policy agenda.

U.S. Nonproliferation Policy in Action: Response to the 1974 Nuclear Test

After India's 1974 nuclear test, a number of countries announced they were re-examining their nuclear relations with New Delhi. Canada felt particularly betrayed by India's use of a Canadian-supplied reactor to provide plutonium for the so-called peaceful explosion.²⁹⁴ Canadian Chief Foreign Policy Minister Ivan Head maintained that "India's May 18 explosion of a nuclear device violate[d] the '71 understanding between India and Canada on Canadian aid to India's nuclear energy program."²⁹⁵ Days later, Ottawa froze its assistance to India's program.

294 For a discussion of Indian political considerations concerning the 1974 test, see Perkovich 176.

295 Robert Trumbull, *New York Times*, 21 May 1974: A1, LexisNexis Academic, LexisNexis, Kreitzburg Library, 2 June 2008, available at <http://grad.norwich.edu>,

However, U.S. support continued as the American administration “concluded that the Indian test did not violate any agreement with the United States and Washington and [the U.S. government] was therefore mandated by the 1963 nuclear cooperation agreement . . . to sell enriched uranium to India for [the U.S.-built nuclear facility at] Tarapur.”²⁹⁶ One of the functions of the Tarapur Atomic Power Station (TAPS) was (and remains) to reprocess spent fuel from local reactors, as well as to generate electricity for the surrounding area. TAPS was under IAEA safeguards, and was not involved in the nuclear detonation.

The U.S. NRC continued to ship enriched uranium to TAPS for two more years, until President Ford announced a significant change to U.S. export policies in response to the nonproliferation debate that had erupted in Washington after the 1974 test. The legislative branch moved to tighten nonproliferation policies by ending U.S. assistance “and where possible, other states’ assistance, to proliferation-sensitive countries.”²⁹⁷ The Ford Administration called for “halting the reprocessing of spent-fuel unless there is sound reason the world community can effectively overcome the associated risks of proliferation.”²⁹⁸ The NRC began to withhold uranium transfers on nonproliferation grounds, while the United States pressed New Delhi to accept IAEA safeguards on all of India’s nuclear facilities.²⁹⁹

Nonproliferation was a central issue during the presidential campaign of former nuclear engineer Jimmy Carter but after assuming office in 1977, President Carter determined to reconcile this objective with a competing desire to strengthen U.S.-India relations.³⁰⁰ Carter had a fondness for the country where his mother had served as a Peace Corps volunteer, and believed India to be “an influential regional power that should be addressed on its own terms.”³⁰¹ The President established dialogue with Indian Prime Minister Morarji Desai, and

296 Perkovich, *India’s Nuclear Bomb*, 184.

297 This was done by passing the 1976 Symington Amendment to the Foreign Assistance Act. See Perkovich, 198.

298 Cited in Perkovich, 198–199.

299 Perkovich, 202.

300 Perkovich, 198–199.

301 Perkovich, 199.

Desai verbally agreed to “reject future nuclear explosions” even though New Delhi did not formally accept this provision.³⁰² In return, Carter promised that he would authorize one more pending shipment of U.S. fuel supplies to TAPS.

In 1978, however, Congress intervened and officially blocked the administration from exporting fuel to India by passing the Nuclear Non-Proliferation Act.³⁰³ According to George Perkovich of the Carnegie Endowment for International Peace, proponents of the NNPA had purposely sought:

... to correct prior executive branch inattention to nonproliferation. Republican Senator Charles Percy noted bitterly that for his first seven years in office, Henry Kissinger “had never spoken before Congress on nonproliferation.” Congress simply did not trust the executive branch to promote decisively the American and international interest in nonproliferation... [and] now intended “to tie the hands of the president and the international community,” as the leading scholar of the NNPA concluded.³⁰⁴

As mentioned, new export policies outlined in the NNPA disallowed nuclear transfers to countries that lacked full-scope IAEA safeguards like India. Instead of compelling New Delhi to adopt nonproliferation

302 Perkovich, 203.

303 Relations between the executive and legislative branches of U.S. government had soured over nuclear cooperation with India, particularly over a “heavy water” episode. After the 1974 test, India assured the U.S. that American-supplied “heavy water” (deuterium-enriched water necessary to convert natural uranium into plutonium) had not been used to produce explosive materials. Neither the U.S. State Department nor AEC followed up on this claim. However, the IAEA later confirmed that American material had indeed been used. When confronted, the State Department continued to deny the possibility. Some critics accused the department and other executive agencies of covering up the fact that India had used U.S. heavy water. Other White House incidents, such as the Watergate scandal and the Vietnam War, contributed to a deep Congressional “dissatisfaction with the performance of the executive branch.” See J. Samuel Walker, “Nuclear Power and Nonproliferation,” *Diplomatic History* 25.2 (Spring 2001): 215–249.

304 Perkovich, 207.

policies, such as renouncing future nuclear tests or abandoning its nuclear weapons program as the U.S. had hoped, the NNPA drove a wedge between the two countries. India protested that new U.S. full-scope safeguards requirements should not apply to the 1963 agreement because the amendments were passed long after the terms of the bilateral agreement were negotiated. To address precisely such a concern, a grace period inscribed in the NNPA gave countries until 1980 to meet the new requirements. Accordingly, the U.S. government's supply of fuel to India continued until 1980.

However, from 1978–1980 the NRC twice moved to block the executive transfer of uranium-enriched fuel by denying appropriate export licenses based on India's refusal to accept IAEA safeguards on all of its nuclear facilities. Each time, President Carter overruled this decision by issuing an executive order to transfer low-enriched uranium fuel to TAPS. On May 8, 1980, Carter ordered the authorization of export licenses for another two years. The president's secretary of state, Edmund Muskie, reiterated the administration's belief that "a positive decision on Tarapur will encourage India in the long-term to act in ways consistent with U.S. interests."³⁰⁵

At the time, the NRC still had to recommend a course of action concerning two shipments requested by India during the grace period allotted by the NNPA, which had ended on March 10. The commission eventually denied a license for both shipments and was again overruled by the president, but the Senate Foreign Relations Committee and the House Foreign Affairs Committee concurred with the NRC's decision. Fearing that India might reprocess spent uranium fuel from its Tarapur stores if released from the terms of the agreement, Carter appealed to Congress for flexibility in applying the NNPA.³⁰⁶ The administration very narrowly convinced a reluctant Senate to vote in favor of one more shipment to India in September 1980. India subsequently (and rather optimistically) applied for a NRC license to receive a third and then a fourth shipment of uranium fuel, insisting that under the 1963 agreement, the U.S. was obligated to supply.

305 "US to Export Nuclear Fuel to India," *Xinhua General Overseas News Service*, 20 Jun. 1980, LexisNexis Academic, LexisNexis, Kreitzburg Library, 2 July 2008, available at <http://grad.norwich.edu.>

306 Walker, 245.

The Reagan team took office in 1981 with a different approach as, according to Perkovich, it opted to “discriminate between countries that posed threats to the United States and those that did not.”³⁰⁷ The subcontinent fell somewhere in between. Still, New Delhi reiterated its stance that should the U.S. government stop supplying uranium fuel, India would be free to do as it wished. Not only did this include the possibility of more “peaceful” nuclear tests, but also the reprocessing of spent fuel, which India announced it was ready to begin. Neither country was willing to capitulate to the demands of the other and fuel transfers halted completely. The stalled 18-year-old nuclear cooperation agreement seemed destined to end badly.

In 1981 the *New York Times* observed, “Some members of Congress opposed the shipments because India has consistently rejected international inspections of all its atomic facilities and has refused to say it would not produce nuclear weapons.”³⁰⁸ (Over two decades later, this would still be the case even as the United States proposed a new civil nuclear cooperation agreement with India.) Despite the turmoil, news reports cite the Reagan administration’s reluctance to terminate the deal, indicating the president was “painted into a corner” by the NNPA.³⁰⁹ Yet, believing that Congress was unlikely to approve future uranium transfers, the administration’s decision to cease cooperation was “made known to the Indian government . . . by senior State Department officials in high-level talks that centered on nuclear issues.”³¹⁰ In an effort to end the agreement on amicable terms and secure a commitment from India to maintain safeguards on spent fuel and reactors at Tarapur, a compromise was struck in July 1982 whereby France agreed to provide India with low-enriched uranium for TAPS. Any spent fuel stores at Tarapur, along with French-origin fuel, would fall under international safeguards. India also agreed to seek the permission of the U.S. government before reprocessing fuel

307 Perkovich, 233.

308 Judith Miller, “India Says Atom Safeguards Will End If U.S. Halts Fuel,” *New York Times* 24 Apr. 1981: A3, A5, LexisNexis Academic, LexisNexis, Kreitzburg Library, 2 June 2008, available at <http://grad.norwich.edu>.

309 Don Oberdorfer, “U.S. is Ending 18-Year Nuclear Pact with India,” *Washington Post* 23 Apr. 1981: A19, LexisNexis Academic, LexisNexis, Kreitzburg Library, 2 June 2008, available at <http://grad.norwich.edu>.

310 Ibid.

previously supplied by the United States.³¹¹ When France's foreign minister announced the agreement, he noted that Paris did not require agreement-specific safeguards or reprocessing permission.³¹² Any fissile materials of French-origin, however, would fall under IAEA safeguards. In this way, France assumed the role of the United States in the nuclear pact, and released Washington from fulfilling the majority of its obligations. The formal bilateral agreement expired in 1993 and the United States did not attempt to negotiate a replacement accord.³¹³

Despite the compromise of French assistance, the endgame of U.S. nuclear export policies was global nuclear sanctioning against India. After extensive American lobbying resulted in the 1992 NSG adoption of full-scope IAEA safeguards requirements, all nuclear-supplier countries, including France, joined in a virtual nuclear embargo of India. The subsequent 1995 endorsement of the IAEA safeguards by remaining NPT parties was viewed by the U.S. government as a hard-won nonproliferation success. India continued to refuse the assumption of full-scope safeguards on its nuclear facilities; hence, any Indian commerce with nuclear exporters in the 1990s and early 2000s—even with Russia—drew public attention and elicited controversy.³¹⁴ This forced New Delhi to develop largely independent solutions to address its growing energy needs, limited and poor-quality natural supply of uranium, and security issues.

The development of these independent solutions, combined with a “deteriorating security environment” in the mid-1990s provided New

311 Bernard Weintraub, “Reagan and Mrs. Gandhi Dispute on Nuclear Fuel for India,” *New York Times* 30 Jul. 1982: 1, LexisNexis Academic, LexisNexis, Kreitzburg Library, 3 June 2008, available at <http://grad.norwich.edu>.

312 “French Foreign Minister Visits India,” *Xinhua General Overseas News Service*, 8 Aug. 1982, LexisNexis Academic, LexisNexis, Kreitzburg Library, 3 June 2008, available at <http://grad.norwich.edu>.

313 Nor did France, as India was still unwilling to accept full-scope IAEA safeguards on its nuclear facilities.

314 For example, see Vladimir Abarinov, “Russia Intends to Build Atomic Power Station in India,” *Russian Press Digest*, 24 Feb. 1995, LexisNexis Academic, LexisNexis, Kreitzburg Library, 2 June 2008, available at <http://grad.norwich.edu>.

Delhi with an incentive for additional nuclear testing.³¹⁵ In May 1998, India announced it had carried out another series of underground nuclear explosions. Under the 1994 Nuclear Proliferation Prevention Act (NPPA), the United States was required to impose a variety of aid and trade sanctions against a NNWS that conducted a nuclear test.³¹⁶ Among other penalties, these embargoes terminated most dual-use exports to India. In addition to the United States, a host of other countries such as Canada, Denmark, Japan, and Sweden also suspended aid to India. Many other nations (including China and Russia) condemned the nuclear test.

The 1994 NPPA required the United States to oppose any World Bank and International Monetary Fund loans to India after the 1998 tests as well. The Clinton administration supported the World Bank's ensuing delay of an \$800 million loan to India, and the U.N. Security Council passed a resolution calling on New Delhi to abandon nuclear weapons development. After India made several public nonproliferation commitments (such as a stated moratorium on nuclear testing, promises to strengthen nuclear export controls and announcing participation in Fissile Material Cut-Off Treaty negotiations), the American administration waived some sanctions. U.S.-Indian relations were further restored when President Clinton paid a landmark visit to New Delhi in 2000.

In hindsight, the ultimate failure of the U.S.-Indian nuclear agreement in the wake of the 1974 Indian nuclear test demonstrates the coherency of post-NNPA American nonproliferation policy. The disintegration of the 1963 contract also helps to explain some of the current difficulty facing the new nuclear cooperation agreement. From the Indian perspective, lingering distrust remains in New Delhi over Washington's historic failure to fulfill its fuel supply commitments. From the point of view of many in Washington, however, India's

315 This was the term used in reference to Pakistan by Indian Prime Minister Vajpayee to justify India's 1998 nuclear tests.

316 For text of Senate Resolution see United States, *Senate Resolution 227 – Expressing the Sense of the Senate Regarding the May 11, 1998 Indian Nuclear Tests*, 105th Cong., 2nd session, S. Res. 227, Washington: GPO, 12 May 1998, 18 May 2008, available at http://www.globalsecurity.org/wmd/library/congress/1998_cr/s980511-india11.htm.

record of nuclear testing makes New Delhi a less than ideal nuclear partner and has led many policy makers to push for strengthened nuclear export controls in the accord currently under consideration.

President Bush's New Approach

When George W. Bush assumed office, U.S. policy towards India shifted dramatically. While the Clinton administration had attempted to improve relations with New Delhi, its global vision was economics-driven and in Asia, focused on China.³¹⁷ At the time, economic growth rates had only just begun to accelerate on the subcontinent, and Clinton did not view India as a potentially significant ally relative to China. Though the administration had declared its intention to “cap, roll back and eliminate” India’s nuclear weapons program after the 1998 Indian nuclear test, the White House was forced to abandon this goal when extensive dialogue between then-Deputy Secretary of State Strobe Talbott and Indian Minister Jaswant Singh confirmed that India was resolutely determined to remain a *de facto* nuclear power.³¹⁸ In combination with the Clinton team’s geopolitical orientation, New Delhi’s declared nuclear policies largely precluded any possibility of extensive bilateral nuclear cooperation.

In 2001, the Bush administration brought a fresh perspective to Washington. Some scholars view this as an inventive approach to nonproliferation.³¹⁹ The new administration’s strategy held that instead of penalizing India for its nuclear endeavors, the United States should facilitate Indian attempts to claim global power status. This was evidenced by the 2002 National Security Strategy, wherein the administration noted that it saw “India’s potential to become one of the great democratic powers of the twenty-first century,” and referenced the country in a section on “main centers of global power.”³²⁰ The same document elaborated on the U.S. government’s newly positive outlook toward India:

317 Lalit Mansingh, *Indo-US Strategic Partnership: are we There Yet?* (New Delhi: IPCS, 2006) 3, 2 June 2008, available at <http://ipcs.org/39IB-IndoUS-Mansingh2.pdf>.

318 Mansingh, 2–3.

319 For a detailed discussion see William Potter, “India and the New Look of U.S. Nonproliferation Policy” 343–354.

320 United States, The White House, *The National Security Strategy of the United States*

The United States has undertaken a transformation in its bilateral relationship with India... differences remain, including over the development of India's nuclear and missile programs... but while in the past, these concerns may have dominated our thinking about India, today we start with a view of India as a growing world power with which we have common strategic interests. Through a strong partnership with India, we can best address any differences and shape a dynamic future.³²¹

The following section will discuss the details of the Bush administration's departure from its predecessor's views and the steps it took to forge an equal partnership with New Delhi.

Bush Administration: the ABM and U.S.-India Relations

Three months after taking office, President Bush announced that U.S. foreign policy on missile defense (and thus non-proliferation) would be pursued in the context of a new strategic framework. In a rapidly changing post-Cold War era, the United States needed to rethink its previous nonproliferation, counter-proliferation, and defense postures.³²² Having made clear during the presidential campaign that the Bush team would be altering arms control and nonproliferation policies, the administration quickly furthered their agenda by appointing John Bolton as undersecretary of state for arms control and international security (he held the position from 2001–2005). Bolton was a widely known critic of arms treaties and international organizations.³²³ Late 2002 also saw the confirmation of Stephen Rodemaker, John Wolf, and Paula DeSutter at the respective helms of the Arms Control (AC), Nonproliferation (NP), and Verification and Compliance (VC) bureaus of the State Department.

of America (Washington: GPO, 2002) 10, 25, 8 June 2008, available at <http://www.whitehouse.gov/nsc/nss.pdf>.

321 Ibid., 27.

322 "President Bush Speech on Missile Defense, May 1, 2001," *START, NMD and the ABM Treaty*, 2001, The Acronym Institute for Disarmament Diplomacy, 2 June 2008, available at <http://www.acronym.org.uk/bush1.htm>.

323 Bolton appears to have been a sort of problematic ally for the administration in that he shared their distaste for arms control regimes but was not as amenable to their vision for nuclear cooperation with India.

For the White House, the 1972 Anti-Ballistic Missile (ABM) Treaty between the United States and the Soviet Union was a Cold War relic. The accord, which limited missile defense systems, had been enacted in order to avoid provoking a war leading to mutually assured destruction (MAD). The logic behind the treaty was that missile defense capabilities would endanger the nuclear balance by potentially enabling one party to reduce the effects of nuclear retaliation to a tolerable level, thereby freeing it to pursue a first strike. It would also encourage an arms race as each country sought enough missiles to overwhelm the other's defenses. In 2001, President Bush declared it was time for the U.S. government to "move beyond the constraints of the . . . ABM treaty," which did not allow the United States to defend itself properly against the growing threat of nuclear proliferation.³²⁴ The White House soon announced that Washington intended to withdraw from the ABM treaty and employ a new strategic framework.³²⁵ The secretaries of defense and state at the time, Donald Rumsfeld and Colin Powell respectively, were prominent supporters of this course of action.

This announcement elicited global controversy, and was widely criticized as a blow to nonproliferation. The Russian government was particularly disparaging of the action. Defense Committee Vice Chairman Alexei Arbatov called America's ABM withdrawal an "extremely negative event of historical scale."³²⁶ Then-President Vladimir Putin described it as a "mistake," but allowed that the withdrawal did not threaten Russian national security.³²⁷ Thirty-one members of the U.S. House of Representatives filed a lawsuit against

324 Ibid.

325 For text of White House press release see United States, Office of the Press Secretary, Department of State, *ABM Treaty Fact Sheet*, 13 Dec. 2001, 12 May 2008, available at <http://www.state.gov/t/ac/rls/fs/2001/6848.htm>.

326 See "Interview with State Duma Committee for Defense Vice Chairman Alexei Arbatov on ABM Treaty," *Johnson's Russia List*, ed. David Johnson, 17 Jun. 2002, World Security Institute, 28 June 2008, available at <http://www.cdi.org/russia/johnson/6312-16.cfm>.

327 "Statement by Russian President Vladimir Putin Regarding the Decision of the Administration of the United States of America to Withdraw From the ABM Treaty of 1972," *Berlin Information-Center for Transatlantic Security (BITS)*, 13 Dec. 2001, 28 June 2008, available at <http://www.bits.de/NRANEU/BMD/documents/Putin131201.htm>.

President Bush to block Washington's pullout. The lawsuit failed and in June 2002, after giving the required six-month notice, the United States unilaterally withdrew from the ABM treaty.³²⁸

While the majority of the international community was unreceptive to American plans for a national missile defense system as part of its new post-ABM framework, India expressed surprisingly ardent support. Administration officials were similarly accommodating in their statements towards New Delhi. Days before the 9/11 terror attacks, U.S. Ambassador to India Robert Blackwill delivered a speech in Mumbai on U.S.-Indian relations. Foreshadowing a transformation in U.S. policies toward India, the ambassador said, "The President has a big idea about U.S.-Indian relations . . . he is seeking to intensify collaboration with India on a whole range of issues that currently confront the international community writ large."³²⁹ The administration moved quickly before the conclusion of its first year in office to "intensify dramatically the level of engagement with the Government of India" by inviting a number of Indian officials to visit Washington.³³⁰ According to aides cited in the *Wall Street Journal*, the president had "... taken particular interest in India going back to 1999, viewing India's democracy and massive, moderate, Muslim population as a stabilizing force for Asia and the Middle East."³³¹

In 2001, both the White House and New Delhi advanced their respective visions. Ambassador Blackwill outlined his role in generating new U.S. policies toward India and the general path of policy direction, as follows:

Knowing that Prime Minister Vajpayee believed that the United States and India were natural allies, we [Blackwill

328 ---, ---, The White House, *Statement by the President*, June 13, 2002, 12 May 2008, available at <http://www.whitehouse.gov/news/releases/2002/06/20020613-9.html>.

329 "Text: Ambassador Blackwill on Shared US-India National Interests," *Weapons of Mass Destruction*, 6 Sept. 2001, 12 June 2008, available at <http://www.globalsecurity.org/wmd/library/news/india/2001/india-010906-usia1.htm>.

330 Ibid.

331 Jay Solomon and Neil King, Jr., "Holding High Hopes for India; Singh's U.S. Visit May Help Political Ties Catch Up to Business Links," *Wall Street Journal* 15 Jul. 2005, Eastern ed.: A8.

and Vajpayee] developed a roadmap in early January 2001...to accomplish the strategic invigoration of the bilateral relationship, which we presented to the President and which he approved. We were on our way, with the two respective bureaucracies to be driven by top-down direction by the two heads of government.³³²

The implications of Blackwill's remarks are significant. Instead of initiating high-level review and evaluation of U.S.-Indian relations and nonproliferation objectives, the ambassador indicates that the Bush administration possessed pre-determined policy intentions.³³³ Just as important was what the ambassador did not say during his address: Blackwill was neither critical of India's 1998 tests, nor did he mention the Nuclear Test Ban Treaty (both issues were highlighted by President Clinton during his visit the previous year). Thus, observers noted that the "tenor and substance of the Ambassador's remarks signaled a calm recognition of India's nuclear status."³³⁴ This was a turning point in U.S.-Indian relations.

The post-9/11 security environment and greater post-Cold War balance of power considerations likely motivated the administration's interests in strengthening relations with India. India is strategically important as a counterweight to Chinese power, and a stronger India could contribute considerably to regional stability. Cooperation could conceivably render the international nonproliferation regime more efficient by allowing it to refocus on threats from rogue nations like Iran and North Korea, instead of punishing nominally responsible

332 United States, Bureau of Public Affairs, Department of State, *The Future of US-India Relations*, by Robert D. Blackwill, 13 Jul. 2003, 15 May 2008, available at <http://www.state.gov/p/sca/rls/rm/22615.htm>.

333 These policy intentions were almost immediately set in motion. In ---,---,---, *The Future of US-India Relations*, Blackwill says, "I worked on the White House foreign policy transition team in the month before President Bush's inauguration. During those weeks, current National Security Advisor Condoleezza Rice, her Deputy Steve Hadley and I continually discussed how we could help the new President quickly implement his big idea of transforming the US-India relationship on the enduring foundation of shared democratic values and congruent vital national interests."

334 Jay Solomon and Neil King, Jr., "Holding High Hopes for India."

and friendly states like India.³³⁵ Yet, the potential revitalization of significant U.S.-Indian ties was also connected to reorienting other areas of foreign policy, in particular Washington's ABM membership. Nonproliferation expert Leonard Weiss observed that the Bush administration has a well documented "institutional antipathy toward arms control regimes"—meaning the ABM treaty along with the Comprehensive Test Ban Treaty (CTBT) and the Fissile Material Cutoff Treaty (FMCT).^{336, 337} In fact, Washington had boycotted a November 2001 UN conference that encouraged support of the former, while American diplomats called the latter impossible to "effectively verify."³³⁸

335 In "Should the U.S. Sell Nuclear Technology to India? – Part II," *YaleGlobal*, 10 Nov. 2005, 28 May 2008, available at <http://yaleglobal.yale.edu/display.article?id=6487>, deal proponent Ashley J. Tellis argues that "bringing New Delhi into the global nonproliferation regime through a lasting bilateral agreement that defines clearly enforceable benefits and obligations... not only strengthens American efforts to stem further proliferation but also enhances U.S. security." Regarding Iran and North Korea, Tellis writes, "Whatever the issues relating to New Delhi might be, they ought not to be mixed up with those of managing regimes that have consistently cheated on their international obligations and then repeatedly lied about it."

336 Leonard Weiss, "U.S.-India Nuclear Cooperation: Better Later than Sooner," *The Nonproliferation Review* 14.3 (Nov. 2007): 434, 18 May 2008, available at <http://cns.miis.edu/pubs/npr/vol14/143/143weiss.pdf>. In Tom Barry, "Meet John Bolton's Replacement," *CounterPunch*, 15 Jun. 2005, 19 August 2008 <<http://www.counterpunch.org/barry06162005.html>>, State Undersecretary for Arms Control Robert Joseph is quoted saying that American security strategies should "not include signing up for arms control for the sake of arms control. At best that would be a needless diversion of effort when the real threat requires all of our attention. At worst, as we discovered in the draft [Biological Weapons Convention] Protocol that we inherited, an arms control approach would actually harm our ability to deal with the WMD threat."

337 In Tom Barry, "Meet John Bolton's Replacement," *CounterPunch*, 15 Jun. 2005, 19 August 2008 <<http://www.counterpunch.org/barry06162005.html>>, State Undersecretary for Arms Control Robert Joseph is quoted saying that American security strategies should "not include signing up for arms control for the sake of arms control. At best that would be a needless diversion of effort when the real threat requires all of our attention. At worst, as we discovered in the draft [Biological Weapons Convention] Protocol that we inherited, an arms control approach would actually harm our ability to deal with the WMD threat."

338 Wade Boese, "Bush Shifts Fissile Material Ban Policy," *Arms Control Today*, Sept. 2004, 10 June 2008, available at http://www.armscontrol.org/act/2004_09/FMCT.asp.

The administration's key appointments in the State Department and National Security Council de-prioritized arms-control regimes.³³⁹

Among these individuals was the trio of Condoleezza Rice (national security advisor from 2001-2005 and secretary of state from 2005-present), Stephen Hadley (deputy national security advisor from 2001–2005 and national security advisor from 2005–present), and Blackwill (ambassador to India from 2001–2003 and a national security council deputy from 2003-2004). According to Weiss:

These [key appointments] regarded undisputed U.S. power and hegemony as the *sine qua non* for a more peaceful world. In pursuit of these aims, the nonproliferation policies of other countries would be judged more in terms of whether they constituted a threat to U.S. national security rather than whether they contributed to strengthening the international regime, though the latter remained a factor. Thus, while India was not an ally, its general outlook toward the United States was friendly, and its nuclear weapons were viewed as posing no direct threat.^{340, 341}

On September 7, 2001, the *New York Times* described the “broader diplomatic strategy” of the White House as one that sought to “engage India on a range of issues, including liberalized trade, counterterrorism, Mr. Bush’s missile defense initiative, and collaborative efforts to ensure the uninterrupted flow of oil from the Persian Gulf.”³⁴² The tragic events of 9/11 catalyzed these policy changes.

339 Weiss, 429–457.

340 Weiss, 434. Weiss also suggests that the administration’s policy may have been influenced by the prospect of myriad commercial opportunities for corporate interests that had heavily supported the administration’s election campaign.

341 Weiss also suggests that the administration’s policy may have been influenced by the prospect of myriad commercial opportunities for corporate interests that had heavily supported the administration’s election campaign.

342 Celia W. Duggar, “U.S. Envoy Extols India, Accepting Its Atom Status,” *New York Times* 7 Sept. 2001, late ed.: A8, LexisNexis Academic, LexisNexis, Kreitzburg Library, 2 June 2008, available at <http://grad.norwich.edu>,

Post-9/11 Foreign Policy Changes and Indian Relations

At the time of the terrorist attacks, the United States maintained sanctions against India stemming from the 1998 Indian nuclear test. By September 22, though, President Bush had waived these measures. This waiver authority was granted by Congress in 1999, following heavy lobbying efforts from American business and agricultural communities who were negatively affected by the trade restrictions. Bush administration officials had tried to lift the sanctions upon assuming office; but according to Asian security analyst Dinshaw Mistry, they “encountered bureaucratic resistance, particularly from the Nonproliferation Bureau of the State Department.”³⁴³ However, 9/11 altered Washington’s geopolitical concerns and overwhelmed resistance to the issue.³⁴⁴ State Department spokesperson Richard Boucher explained the executive waiver: “We intend to support those who support us. We intend to work with those governments that work with us in this fight [against terrorism].”³⁴⁵

Boucher’s statement seemed to close the door irreversibly on the U.S. government’s previous policy goal to cap, rollback, and eliminate India’s nuclear weapons program. In addition to the larger geopolitical concerns previously mentioned, there were situation-specific reasons for this policy shift.³⁴⁶ India was unlikely to renounce its nuclear program in the absence of strong coercive action—if New Delhi had given up its program, it would have been the first state to abdicate nuclear power after having conducted nuclear tests. Yet, the American business community and government had become increasingly unwilling to bear the costs of sanctions on U.S. markets, and heavy lobbying from those with financial stakes in India helped cement this sentiment in Washington. Consequently, India had little incentive to deviate from the path of obtaining its goal of a minimum credible

343 Dinshaw Mistry, “Diplomacy, Domestic Politics and the U.S.-India Nuclear Agreement,” *Asian Survey* 46.5 (2006): 680.

344 Mistry 681.

345 For text of press release see United States, Daily Press Briefing, Department of State, *Transcript of State Department Briefing*, by Richard Boucher, 24 Sept. 2001, 2 June 2008, available at <http://usembassy-israel.org.il/publish/peace/archives/2001/september/092513.html>.

346 For a more detailed discussion of reasons for a U.S. nuclear policy shift, see Weiss 433-434.

deterrent—that is, just enough nuclear weaponry to deter Pakistan from a nuclear attack. Instead, India needed only to bide its time until domestic pressures within the United States caused sanction removal. In addition, the shared experience of terrorist attacks (in the United States in September 2001 and India's parliament in December 2001) spotlighted a common interest in nonproliferation.³⁴⁷ Weiss notes that consequently, “some nuclear communication between the two countries was needed in order to foster common approaches to export controls and related nonproliferation initiatives.”³⁴⁸

The prospect of nuclear cooperation was first conceived when India's External Affairs Minister Jaswant Singh visited Washington in late 2001. Emerging from a meeting at the White House, Singh enthusiastically characterized the president as “marvelous,” and described the visit as “the start of a new era.”³⁴⁹ Shortly thereafter, *The Indian Express* reported that a joint group for defense cooperation was now “fully functional” for the first time since its collapse following India's 1998 nuclear test.³⁵⁰ The U.S.-Indian bilateral Defense Policy Group (DPG), headed by Undersecretary of Defense for Policy Douglas Feith and Indian Defense Secretary Dr. Yogendra Narain, was ready to “discuss proposals of cooperation” and implementation “at the policy level.”³⁵¹

The Defense Policy Group had previously helmed tentative movements toward U.S.-Indian defense cooperation immediately after Prime Minister Vajpayee took office in 1996. However, the 1998 test and ensuing sanctions severely derailed this type of collaboration between the two countries. It took both the Singh-Talbot dialogue, which began in late 1998 and lasted until early 2000, and the administration's September 2001 removal of the remaining economic

347 Weiss, 435.

348 Ibid.

349 Peter Symonds, “India Embraces Bush and National Missile Defense Project,” *World Socialist Web Site*, International Committee of the Fourth International (ICFI), 16 May 2001, 2 July 2008, available at <http://www.wsws.org/articles/2001/may2001/ind-m16.shtml>.

350 J. N. Dixit, “Trust is the Keyword,” *Indian Express* 10 May 2002, 9 June 2008, available at <http://www.meaindia.nic.in/opinion/2002/05/10o01.htm>.

351 Ibid.

and technological sanctions against India to restore the relationship.³⁵² Reinstatement was in no small part because “the U.S. defense involvement with India has broader political and strategic objectives in dealing with the power equations in the Asian region and the Indian Ocean,” *The Indian Express* later noted.³⁵³ Tellingly, U.S. Secretary of Defense Donald Rumsfeld visited New Delhi in November 2001, less than a month after the United States commenced military operations in Afghanistan.³⁵⁴

By December, the DPG had met three times and established a roadmap to upgrade vigorously U.S.-Indian strategic ties through regular meetings and policy dialogue.³⁵⁵ Cooperation between the two countries’ armed forces was “institutionalized” through the creation of “joint executive steering groups” between U.S. and Indian army, navy, and air forces, while top U.S. and Indian military officials began exchanging visits. A Joint Technical Group under the Defense Policy Group was also established “to discuss the promotion of bilateral ties in the field of defense production and research.”³⁵⁶ In this way, the DPG served as a primary mechanism for steering the U.S.-Indian defense relationship.

Initiating U.S.-Indian Civil Nuclear Cooperation

The 2002 High-Technology Cooperation Group (HTCG)

As tensions between India and Pakistan threatened to escalate into full-scale conflict throughout much of 2002–2003, U.S.-Indian relations continued on their reoriented trajectory. Significantly, Ambassador Blackwill noted that 2003:

352 Ibid.

353 Ibid.

354 Wade Boese, “U.S., India Discussing Arms Deals, Military Ties,” *Arms Control Today*, Dec. 2001, 10 June 2008, available at http://www.armscontrol.org/act/2001_12/indarmsdec01.asp.

355 India, Embassy of India, *Joint Statement of the India-U.S. Defense Policy Group*, 4 Dec. 2001, 28 May 2008, available at http://www.indianembassy.org/indusrel/2001/jdwg_dec_04_01.htm.

356 Ibid.

...mark[ed] the first time in five years that a senior U.S. official has come to India to discuss civil nuclear collaboration, [NRC] Chairman Richard Meserve toured the Tarapur Atomic Power Station and the Bhabha Atomic Research Center. There are ongoing parallel efforts regarding high technology transfer and civil space cooperation.³⁵⁷

Collaboration began with a November 2001 meeting between President Bush and External Affairs Minister Jaswant Singh that envisioned a “bilateral strategic partnership,” including forging stronger ties in high-technology trade.³⁵⁸ Such links would require addressing and reducing barriers to high-technology trade and, to that end, a first set of talks was held under the auspices of the HTCG.

Within a year of the Bush-Singh meeting, the HTCG was established between U.S. Undersecretary of Commerce for Industry and Security Kenneth Juster and Indian Foreign Secretary Kanwall Sibal. Chaired by the Department of Commerce since 2003, the HTCG has sought to facilitate strategic commerce between the United States and India through ongoing dialogue.³⁵⁹, ³⁶⁰ Also in 2003, the group began reviewing U.S. export policies in order to expand Indian access to dual-use items and technologies.³⁶¹ According to the Bureau of Industry and Security at the Department of Commerce, the HTCG “proved to be a very effective forum through which to reduce barriers to bilateral high-technology trade while safeguarding trade in sensitive

357 Blackwill, *The Future of US-India Relations*.

358 Mistry, 681.

359 Mistry notes that “Juster and Sibal chaired HTCG meetings in July and November 2003; Juster and the new Indian Foreign Secretary Shyam Saran chaired the meeting in November 2004; and Saran and Juster’s successor (Undersecretary of Commerce for Industry and Security David McCormick) chaired the fourth meeting in November-December 2005” (681).

360 For an outline of HTCG objectives see United States, Bureau of Industry and Security, Department of Commerce, *Statement of Principles for U.S.-India High Technology Commerce*, 5 Feb. 2003, 2 June 2008, available at <http://www.bis.doc.gov/internationalprograms/statementprinciplesindia.htm>.

361 See Bureau of Industry and Security, Department of Commerce, *Unleashing the Potential of U.S.-India Civil Space Cooperation*, by Kenneth I. Juster, 22 Jun. 2004, 2 June 2008, available at http://www.bis.doc.gov/news/2004/bangaloreindia6_22.htm.

items.” As a result, the “overall value of licensed dual-use exports from the United States to India exceeded \$90 million” in fiscal year 2004.³⁶² The value of these exports had more than tripled in the two years since the resumption of the HTCG, and “in addition, the Commerce Department... posted a representative at the U.S. Embassy in New Delhi to further facilitate U.S.-India high-technology trade.”³⁶³ This high technology trade forged the path for nuclear-related exchanges. Mistry confirms:

Robert Blackwill, the U.S. ambassador to India at the time, strongly promoted high-technology cooperation as he wanted to integrate India in the global nonproliferation regime. He initially concentrated on removing U.S. policy impediments to cooperation in the civilian nuclear and space and high-technology areas with India.³⁶⁴

Some of these policy impediments involved U.S. export licensing requirements for a number of major Indian entities identified by the Department of Commerce’s Bureau of Industry and Security (BIS)—conditions that traced back to New Delhi’s 1998 nuclear test. Naturally, the scope of the HTCG discussions did not address all of the areas in which the administration intended to cooperate with India, and while dialogue considered space and civil nuclear cooperation, it did not significantly advance these avenues.³⁶⁵ This necessitated a separate negotiation to further cooperation and address U.S. nuclear policy impediments. According to Mistry, talks were “conceptualized” by the Bush administration in 2003 as a “glide path” to bring closure to the debate about nuclear and space cooperation with India.³⁶⁶, ³⁶⁷ Ultimately, these meetings defined the future course

362 ---, ---, *United States and India Hold Talks on Stimulating High-Technology Commerce*, 19 Nov. 2004, 2 June 2008, available at <http://www.bis.doc.gov/news/2004/indianov19.htm>.

363 Ibid.

364 Mistry, 681.

365 Mistry, 681.

366 Ibid.

367 In “U.S. Space Aid to India: On a “Glide Path” to ICBM Trouble?” *Arms Control Today*, Mar. 2006, 10 June 2008, available at http://www.armscontrol.org/act/2006_03/March-IndiaFeature, Richard Speier cites Powell telling the *Washington Post* that the “glide path” would bring closure to “a basket of issues that they were always asking us about called...“the Trinity” [referring

of enhanced cooperation between the two countries and sparked a second round of negotiations that would directly address U.S.-Indian civil nuclear cooperation.

Condoleezza Rice, Stephen Hadley, and Ambassador Blackwill were key proponents of U.S.-India policy reorientation. U.S. Trade Representative Robert Zoellick³⁶⁸ and Counselor of the U.S. Department of State Philip Zelikow also held what Blackwill described as “a global orientation toward India.”³⁶⁹ Hadley and Blackwill were co-authors of the new India policy requested by Bush in 1999, and Rice had been a strong advocate of making civil nuclear cooperation a pivotal aspect of the administration’s re-conceptualized policy toward India early on. While serving as Bush’s foreign policy advisor during the 2000 presidential election, she wrote in *Foreign Affairs*:

There is a strong tendency conceptually [in the United States] to connect India with Pakistan and to think only of Kashmir or the nuclear competition between the two states. But India is an element in China’s calculation, and it should be in America’s, too. India is not a great power yet, but it has the potential to emerge as one.³⁷⁰

Rice was considered the “original architect of [the] expanded relationship with India and [responsible for] giving it high priority and a fresh focus in the Bush administration,” according to the *Asia Times Online* in 2004.³⁷¹ During the president’s first term, Rice, along with Blackwill and Hadley, often met resistance from the Powell-led State Department. This was because Secretary Powell relied closely on

to high-technology areas, areas having to do with space launch activities, and nuclear industry.]” Powell, who favored an incremental approach with respect to sensitive trade with India, went on to say that the U.S. had “to protect certain ‘red lines’ that we have with respect to proliferation.”

368 Zoellick would also serve as deputy secretary of state from 2005–2006, and World Bank President from 2007–present.

369 See Robert D. Blackwill, “A New Deal for New Delhi,” *Wall Street Journal* 21 Mar. 2005: A16.

370 Siddharth Srivastava, “India Through the Rice Prism,” *Asia Times Online* 28 Nov. 2004, 25 June 2008, available at http://www.atimes.com/atimes/South_Asia/FK18Df05.html.

371 Ibid.

Clinton-era departmental preferences; post-1998 Indian nuclear test views insisted that India meet certain benchmarks before cooperation could proceed.³⁷² (Essentially, career officials wanted New Delhi to sign the Comprehensive Test Ban Treaty, enforce NSG nuclear export controls, and negotiate a Fissile Material Cut-Off Treaty.) High-level cooperation with India during Powell's tenure was also inhibited by the secretary's familiar "general-to-general" rapport with Pakistan's Pervez Musharraf, which made New Delhi uncomfortable.³⁷³ In 2004, then-Foreign Minister Jaswant Singh memorably articulated India's frustrations with the U.S. government at a news conference in New Delhi. Disagreeing with General Powell's account of his own role in facilitating India's tentative rapprochement with Pakistan following the Kashmir conflict, the minister's comments were recalled by the *Washington Post*: "'The U.S. bureaucracy are world champions in... inaction, in finding reasons not to do things.' [Singh] added that the U.S. bureaucracy is three times ahead of its Indian counterpart in 'obfuscating, obstructing and ensuring that nothing is done.'"³⁷⁴

When Rice replaced Powell as secretary of state in 2005, some of this bureaucratic inertia disappeared. In fact, Rice used her direct access to New Delhi (through Brajesh Mishra, who was in charge of India's foreign policy under former Prime Minister Atal Bihari Vajpayee, and J. N. Dixit, India's national security advisor under Prime Minister Manmohan Singh) to move bureaucracies within the United States and India beyond "Cold War rhetoric."³⁷⁵ According to New Delhi-based journalist Siddharth Srivastava, the relationship between Rice and her Indian equivalents, which was "first promoted by Blackwill and sustained when he moved to the White House," enabled

372 In *Engaging India: Diplomacy, Democracy and the Bomb* (Washington, D.C.: Brookings Institution Press, 2004) 211, Strobe Talbott maintains that it was Powell's strong desire for continuity of policy that led the Bush administration to uphold NPT-related restrictions on India for over two years. Powell also told the Senate Foreign Relations Committee in 2001 that "We have to do what we can to restrain [India's] nuclear program at this time" (210).

373 Srivastava, "India Through the Rice Prism."

374 Glenn Kessler, "India's Ex-Foreign Minister Assails Powell," *Washington Post* 28 Oct. 2004: A19.

375 Srivastava, "India Through the Rice Prism."

Washington and New Delhi to “iron out differences as well as get a real feel of each other.”³⁷⁶

However, even prior to Powell’s departure, Hadley, Blackwill, and Rice advanced the new India agenda. In September 2003, Hadley flew unannounced to New Delhi “with a major plan to intensify high-technology cooperation with India by moving beyond the traditional bilateral discourse on non-proliferation.”³⁷⁷ Discussions were held with Hadley’s Indian counterparts, and a framework began to emerge.³⁷⁸ Ensuing “rapid-fire negotiations” were coupled with a December visit to Hadley in Washington by an Indian delegation.³⁷⁹ By January 2004, President Bush and Prime Minister Vajpayee formalized their vision for the future of U.S.-Indian relations and announced it under the title of the Next Steps in Strategic Partnership Initiative (NSSP).

The 2004 Next Steps in Strategic Partnership Initiative

The NSSP became the vehicle for White House-dominated movement away from the previously institutionalized approach to India and nonproliferation based on the NPT and AEA. In distancing itself from Clinton-era policy by attempting to integrate India not only with the international nonproliferation regime but also with the U.S. government’s new strategic framework, the Bush administration progressed toward an *ad hoc* strategy.

The NSSP initiative outlined a number of “reciprocal steps” the United States and India would take to strengthen bilateral ties in the areas of civilian nuclear activities, civilian space programs, high-technology trade, and missile defense.³⁸⁰ These would be implemented in three phases, the first of which concluded in September 2004

376 Ibid.

377 C. Raja Mohan, “Between Wen and Gen, Natwar Slips in US Trip,” *Indian Express*, 13 Apr. 2005, 2 July 2008, available at http://www.indianembassy.org/India_media/Apr_05/IE3.htm.

378 Srivastava, “India Through the Rice Prism.”

379 Mohan, “Between Wen and Gen.”

380 United States, Bureau of Public Affairs, Department of State, *United States - India Joint Statement on Next Steps in Strategic Partnership*, 17 Sept. 2004, 16 June 2008, available at <http://www.state.gov/r/pa/prs/ps/2004/36290.htm>.

when restrictions against Indian entities resulting from the 1998 tests were significantly reduced. This was done after India agreed to allow Washington to monitor, via an export-control attaché at the American embassy in New Delhi, the so-called “end use” of U.S.-origin technologies to ensure those items were being applied in accordance with Indian promises.³⁸¹

U.S.-Indian bilateral commerce in areas covered by the NSSP was not a novelty. In the past, the United States and India had collaborated to varying degrees on space research and development. However, space technology can be applied as missile technology, as was evidenced when India replicated parts of its nuclear-capable Agni missile from 1960s-era American rocket blueprints and information requested from NASA.³⁸² Thus, cooperation in these areas had not previously achieved much success. In fact, it was concern over India’s focus on expanding its missile capabilities that led the United States to initiate the voluntary Missile Technology Control Regime (MTCR) in 1987.³⁸³ This relationship further deteriorated in the 1990s, and almost collapsed after India’s 1998 nuclear test.

Intent on reworking stagnant policies, the administration’s NSSP proposed missile-defense dialogue and other political, military, and economic ties. Dialogue was not always successful.³⁸⁴ Under the DPG, discussions culminated in a ten-year defense agreement establishing unprecedented military links through commitment to joint weapons production, collaboration on missile defense, and other security initiatives. The New Framework for the U.S.-India Defense Relationship (NFDR) agreement, signed by Defense Secretary Donald Rumsfeld and Indian Defense Minister Pranab Mukherjee in June

381 Mistry, 681.

382 Jennifer Kline, “U.S.-India Space Cooperation Reaches New Heights, Despite Lingering Proliferation Concerns,” *WMD Insights*, n.d. *James Martin Center for Nonproliferation Studies*, 21 Jul. 2006, Monterey Institute of International Studies, 2 June 2008, available at http://cns.miis.edu/pubs/other/kline_060720.htm.

383 Ibid.

384 For example, a deal for missile defense stalled. See Wade Boese, “Proposed Missile Defense Sale to India Still in Limbo,” *Arms Control Today*, Apr. 2003, 15 June 2008, available at http://www.armscontrol.org/act/2003_04/arrow_apr03.asp.

2005, represented a major upgrade in terms of cooperation from its predecessor.

As of mid-2005, significant bilateral ties had been forged in economic, defense, energy, science, and technology cooperation. Around the same time Rumsfeld signed the NFDR, Energy Secretary Samuel Bodeman formed the “U.S.-India Energy Dialogue,” which established five working groups in order to discuss nuclear technology exchange.³⁸⁵ Matters under consideration included “fusion science and related fundamental research topics,” which, according to a *Power and Interest News Report*, would “ostensibly not require approval under the Department of Energy’s regulations for ‘fundamental’ technology transfer.”³⁸⁶ This mid-2005 dialogue proved particularly relevant because it preceded, by only a few weeks, the official White House announcement of its intent to negotiate a formal civil nuclear cooperation agreement with India.

The 2005 Joint Statement

On July 18, 2005, during an Indian state visit to Washington, D.C., President Bush and Indian Prime Minister Manmohan Singh announced jointly that the United States and India would formally expand bilateral cooperation in areas of civil nuclear energy and dual-use technology. Strengthening the United States’ ties to India in this manner would advance four key goals as iterated by the Joint Statement:

1. Assist India in meeting its energy demands
2. Reduce potentially enormous amounts of fossil fuel emissions
3. Promote economic growth and development by attracting foreign direct investment

385 For a list of working groups and dialogue topics, see United States, Bureau of South and Central Asian Affairs, Department of Energy, *U.S.-India Energy Dialogue*, 18 Jul. 2005, 16 June 2008, available at <http://www.state.gov/p/sca/rls/fs/2005/49724.htm>.

386 Cited in Lora Saalman, “The Implications of the U.S.-India Strategic Partnership,” *Power and Interest News Report*, 5 Aug. 2005, 15 June 2008, available at http://www.pinr.com/report.php?ac=view_report&report_id=341.

4. Integrate India into the non-proliferation regime by bringing its civil nuclear program under an international framework.³⁸⁷

In order to accomplish this last objective, President Bush announced that he would “work to achieve full civil nuclear energy cooperation with India as it realizes its goals of promoting nuclear power and achieving energy security.”³⁸⁸ The President also declared his intention to “seek agreement from Congress to adjust U.S. laws and policies,” and to “work with friends and allies to adjust international regimes to enable full civil nuclear energy cooperation and trade with India.”³⁸⁹ In turn, the Prime Minister imparted that “India was ready to assume the same responsibilities and practices and acquire the same benefits and advantages as other leading countries with advanced nuclear technology, such as the United States.” By undertaking those responsibilities and practices, India agreed to negotiate a plan to separate its civilian nuclear energy facilities from its military sites. IAEA safeguards would be applied to the former as would Additional Protocol (i.e., the IAEA’s ability to detect and verify undeclared nuclear activities), but not toward the latter. New Delhi also agreed to continue its moratorium on nuclear testing, work towards concluding a Fissile Material Cut Off Treaty, support international nonproliferation efforts, and adhere to Missile Technology Control Regime (MTCR) and NSG guidelines. Critics contended that none of these concessions required India to alter its existing policies significantly for the deal to proceed.³⁹⁰

Secretary Rice played a vital role in initiating the proposed nuclear agreement outlined in the Joint Statement. During a March 2005 visit to New Delhi, Rice offered “the prospect of a broader strategic

387 United States, Office of the Press Secretary, The White House, *Joint Statement Between President George W. Bush and Prime Minister Manmohan Singh*, 18 Jul. 2005, 2 June 2008, available at <http://www.whitehouse.gov/news/releases/2005/07/20050718-6.html>.

388 Ibid.

389 Somewhat ironically, according to the *Washington Post*, “During Rice’s confirmation process, she was asked in a written questionnaire whether the administration anticipated that Congress would need to change laws regarding India policy. She answered no.” See Glenn Kessler, “India Nuclear Deal May Face Hard Sell,” *Washington Post*, 3 Apr. 2006: A01.

390 For example, see Weiss 437.

relationship with India including military, economic and even nuclear cooperation” to offset the news that the United States would be selling a number of F-16s to Global War on Terrorism-ally Pakistan.³⁹¹ She emphasized that cooperation could be extensive and would advance quickly if India adopted effective export controls.³⁹² When the President announced the military sale to Pakistan days later, the State Department briefed the press on its new India approach. According to the *Washington Post*:

One official -- ...Zelikow -- said the policy’s “goal is to help India become a major world power in the twenty-first century. We understand fully the implications, including military implications, of that statement.” One U.S. official involved in the briefing said Zelikow’s statement went beyond the talking points drafted for the news conference -- but as time passed, it was clear his bolder pronouncement reflected the administration’s true position.³⁹³

After Rice returned from Asia, her colleague Counselor Zelikow “began exchanging memos with [Ashley J.] Tellis,” a leading expert on South Asia and former associate of Ambassador Blackwill, and who was also a senior associate at the Carnegie Endowment for International Peace.³⁹⁴ These memos resulted in a Carnegie Endowment “action agenda” for U.S.-Indian relations, which was “completed in mid-May” and later published under the title “India as a New Global Power.”³⁹⁵ In it, Tellis wrote:

If the United States is serious about advancing its geopolitical objectives in Asia, it would almost by definition help New Delhi develop its strategic capabilities such that India’s nuclear weaponry and associated delivery systems could deter against the growing and utterly more capable nuclear forces Beijing is likely to possess by 2025.³⁹⁶

391 Kessler, “India Nuclear Deal May Face Hard Sell.”

392 Mistry, 682.

393 Kessler, “India Nuclear Deal May Face Hard Sell.”

394 *Ibid.*

395 *Ibid.*

396 Ashley J. Tellis, *India as a New Global Power: An Action Agenda for the United States* (Washington: Carnegie Endowment for International Peace, 2005) 35.

Shortly after Secretary Rice's March visit, a U.S. NRC team led by Commissioner Jeffrey Merrifield followed up her communiqué. Observers noted that after meeting with India's Atomic Energy Regulatory Board, the delegation "came back quite satisfied with India's nuclear safety record."³⁹⁷ In conversations with Indian representatives, the team reiterated Rice's point that "both sides could vault ahead in their bilateral relations by cooperating in the civilian nuclear sector especially if India adopted effective [nuclear] export controls."³⁹⁸ Recognizing an unprecedented opportunity for nuclear cooperation with the United States, the Indian parliament complied with Rice's suggestion by passing legislation strengthening export controls within two months.³⁹⁹ Six weeks of negotiations on the terms of the proposed nuclear cooperation, headed by the newly appointed Undersecretary for Political Affairs Nicholas Burns—a strong proponent of the reoriented India policy—and Indian Foreign Secretary Shyman Saran, followed.

The quick pace of nonproliferation policy changes in 2005 can be traced to the departure of Secretary of State Powell and the arrival of Condoleezza Rice at the Foggy Bottom helm.⁴⁰⁰ Under Powell, the State Department had been conflicted over changes in nonproliferation policy. During Secretary Powell's tenure, the Nonproliferation (NP) and Arms Control (AC) Bureau within the department had generally opposed high-technology transfers to India that might damage U.S. nonproliferation objectives.⁴⁰¹ (The NP is responsible for deterring the spread of nuclear weapons and

397 Siddharth Srivastava, "US Looks Nuclear India in the Eye," *Asia Times Online* 14 May 2005, 6 June 2008, available at http://www.atimes.com/atimes/South_Asia/GE14Df03.html.

398 Mistry, 682.

399 This legislation was the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activity) Bill, passed in May 2005. The month prior, India had also participated in the Convention on Nuclear Safety (CNS) review meeting for the first time, and ratified the CNS.

400 In Kessler, "India Nuclear Deal May Face Hard Sell," the Bush administration's foreign policy during its second term is described as "largely driven by Rice and a close circle of advisors, not White House staff."

401 Ashley J. Tellis, "The Evolution of U.S.-India Ties: Missile Defense in an Emerging Strategic Relationship," *International Security* 30.4 (Spring 2006): 145.

other weapons of mass destruction, while the AC negotiates and implements arms control agreements.) According to Mistry, despite the fact that the “South Asia Bureau [within the State Department] favored technology transfers to further the strategic partnership with India,” concessions made from 2002–2004 by the United States toward India were necessarily incremental due to NP and AC resistance.⁴⁰² When Rice was appointed as secretary of state in 2005, these organizational dynamics changed.

Dynamic shifts coincided with personnel turnover within the department. In 2004, the Office of the Inspector General (IG) recommended merging the AC and NP offices and on July 9, 2005, recently appointed Secretary Rice announced implementation of a major departmental reorganization that would include the union of both bureaus. A single Bureau of International Security and Nonproliferation (ISN) would take their place. Against the recommendations of an internal review board, the scope of a third office, the Verification and Compliance Bureau (VC), would also be expanded.⁴⁰³ (The VC is loosely associated with the AC bureau, as it oversees policies related to verifying the fulfillment of the terms of agreements reached by Arms Control.)

The merger was carried out with remarkable speed in the fall of 2005 as senior department officials expressed a desire to implement the IG’s recommendations as quickly and painlessly as possible. Still, one diplomatic correspondent claimed, “the reorganization was conducted largely in secret by a panel of four political appointees. A career expert was allowed to join the group only after most decisions had been made.”⁴⁰⁴ In addition, some recommendations were set aside: the IG report had asked that the VC bureau be streamlined, calling the NP “overworked,” and the AC bureau “under worked.” Instead, “the Verification bureau was expanded, not downsized, while officials in the Arms Control bureau appeared to attain more authority. Both

402 Mistry, 684.

403 The fourth bureau mentioned was the Bureau of Political-Military Affairs.

404 See Warren P. Strobel, “State Department Sees Exodus of Weapons Experts,” *Knight Ridder* 8 Feb. 2006, 16 June 2008, available at <http://www.informationclearinghouse.info/article11829.htm>.

bureaus had seemed more in sync with the administration's views, officials said."⁴⁰⁵

The flurry of internal activity saw around a dozen senior experts and career employees leave the department. Though AC staffers were largely retained,⁴⁰⁶ the departmental shake-up left Rice with limited resources when it came to weapons control experts, as new political appointees replaced more qualified and experienced personnel.⁴⁰⁷ The reorganization also eliminated most public evidence of the internal conflict that had characterized Powell's State Department and often positioned it against other elements of the administration.⁴⁰⁸ According to the *Washington Post*, State Department insiders "privately acknowledge[d]...they used to be thrilled by the department's reputation as a renegade in President Bush's first term, but...the message has become clear...that such attitudes are no longer acceptable."⁴⁰⁹

Another personnel shift may have also influenced the fast advance of the accord. By design or stroke of luck, John Bolton was appointed as U.S. ambassador to the UN, thus removing one potential opponent to the agreement. *Asia Times* had reported that Bolton was "vehemently opposed to any concessions to India on the nuclear front," and had "blocked a key Indian plan to acquire the Arrow anti-missile system from Israel."⁴¹⁰ (Prolonged conflict with the U.S. Senate over the controversial Undersecretary's nomination to the UN position effectively ended when the president installed Bolton

405 See Kessler, "Administration Critics Chafe at State Dept. Shuffle."

406 Ibid.

407 Ibid.

408 Internal transformation was not immediate. In "Reorganization Runs Amok," Rust cites the "inexplicable" denial of long-serving, qualified and superior senior department career staff to leading positions in the new organization as reinforcing the impression that "political factors played a role in the panel's decision." Instead, individuals with "favorable personal or political connections" filled those positions which led to a "mini-revolt against the panel." For press coverage of the issue, see William Strobel, "Career Weapons Experts Booted by Bush Team," *Philadelphia Inquirer* 8 Feb. 2006: A2.

409 Kessler, "Administration Critics Chafe at State Dept. Shuffle."

410 Kaushik Kapisthalam, "India's US Nuclear Deal Hangs by a Thread," *Asia Times Online* 16 May 2006, 18 May 2008, available at http://www.atimes.com/atimes/South_Asia/HE16Df01.html.

during a congressional recess.) By the time Bolton's State Department replacement and ally, former senior director at the National Security Council (NSC) Robert Joseph, was confirmed on May 26, 2005, negotiations on the terms of the nuclear agreement were already at "an advanced stage."⁴¹¹ According to *Washington Post* political and diplomatic correspondent Glenn Kessler, administrative reshuffling also meant "other key posts in the nonproliferation ranks were unfilled, leaving officials in that area thinking they had no voice in the debate." Meanwhile, at the Pentagon, Powell's frequent adversary Donald Rumsfeld "fully backed closer relations with India."⁴¹²

Thus, in the summer of 2005, the opinions of government nuclear nonproliferation experts were noticeably absent in policy development and dialogue between Washington and New Delhi. June negotiations among the Indian and U.S. governments on the terms of the proposed nuclear cooperation, which would be embodied in the July Joint Statement, proceeded. Joseph's late arrival as Undersecretary of State for Arms Control and International Security did not preclude his participation in crafting the agreement. Joseph and his successor at the NSC, non-proliferation specialist John Rood, compiled a list of "commitments they hoped to extract from India," with the assistance of their respective staffers.⁴¹³ These obligations included capping fissile-material production and assuming permanent full-scope safeguards, to be verified by U.N. inspectors.

It soon became apparent, however, that the U.S. was attempting to exact nonproliferation concessions India was reluctant to give. Indian officials made it clear they had no intention of assuming full-scope safeguards on their nuclear facilities or subjecting their nuclear program to external influence.⁴¹⁴ One U.S. official, cited in Kessler's reporting of the negotiations, stated that the commitments Joseph and Rood desired from New Delhi "never even got to the stage where

411 Mistry, 684.

412 Kessler, "India Nuclear Deal May Face Hard Sell."

413 Ibid.

414 In "India Nuclear Deal May Face Hard Sell," Kessler reports that even on the night of July 17, 2005, the Indian Foreign Secretary informed the U.S. that the agreement would not be possible because New Delhi could not accept the U.S.'s conditions on safeguards and inspections.

we could negotiate them.”⁴¹⁵ Regardless, Prime Minister Singh had been scheduled to visit the White House on July 18, at which point the administration hoped to announce the agreement.

With the Bush-Singh visit imminent, U.S. negotiators were bitterly divided on how to finalize the agreement. Having left the U.S. for other business, Joseph was not present for last-minute talks. As a result, Rood was the only senior nonproliferation official engaged at this stage. Other U.S. negotiators strongly favored finalizing the terms of cooperation in time for Singh’s trip.⁴¹⁶ Kessler described the days leading up to the Joint Statement:

Rood delivered forceful presentations to Burns and others throughout the negotiating process... few Indian officials expected a breakthrough during the Bush-Singh meeting, but Rice was determined to see negotiations succeed. Bush had reached the conclusion that the nuclear concerns carried less weight than the enormous benefits that a broad partnership with a large and friendly democracy could bring.⁴¹⁷

By this account, negotiations were pending until the morning of the day of the announcement, and the text of the Joint Statement was still being written even as Bush and Singh met in the Oval Office. Likely a consequence of the division among the negotiating team and the determination of some officials to produce terms for an imminent announcement, conditions articulated in the Joint Statement were loosely defined. Nonetheless, the statement marked a decisive turning point in U.S.-Indian relations and formally concluded the NSSP initiative.⁴¹⁸ Mistry describes the evolution of the proposed agreement outlined in the Joint Statement:

In summary, a small group of Bush administration officials developed and negotiated a major U.S. foreign policy initiative – that of reversing a 30-year old nonproliferation policy and allowing nuclear

415 Ibid.

416 Ibid.

417 Ibid.

418 Mistry, 683.

energy cooperation with India. Moreover, negotiations took place in specialized groups such as the HTCG and NSSP and did not involve extensive consultations with, and therefore did not face resistance from, Congress and nonproliferation interest groups.⁴¹⁹

Following the announcement of the Joint Statement, some NSG members such as Canada wondered why the United States did not extract more concessions from India during the negotiations. Austria, Sweden, and Switzerland registered strong reservations regarding the proposed agreement, while France, Russia, and the United Kingdom indicated their general support of the accord if it could be shown to complement global nonproliferation objectives.⁴²⁰ China remained silent. Domestically, the reaction to the terms outlined in the Joint Statement proved more problematic for the administration.

The March 2006 Bush-Singh Accord

In the fall of 2005, the administration and New Delhi took steps to implement the agreement publicized in the Joint Statement. The days immediately following the July announcement saw Bush administration officials begin to lobby Congress, which would have to approve the final agreement. The White House's goal was to reassure allies and potential converts within the legislative branch that nuclear trade with India would not contravene NPT obligations, nor undermine decades of U.S. nuclear export policies and efforts to strengthen the global nonproliferation regime. Chairman of the Senate Foreign Relations Committee (SFRC) Richard Lugar (R-IN) indicated that Congress expected to be fully briefed by the White House on the details of the agreement before undertaking any action. On July 20, he confirmed, "We're going to have a lot of conversations."⁴²¹ In October 2005, a bipartisan quartet consisting of the chairmen and ranking members of the SFRC and the House Committee on International Relations (HCIR)⁴²² wrote a letter to

419 Mistry, 684.

420 Wade Boese, "Suppliers Weigh Indian Nuclear Cooperation," *Arms Control Today*, Nov. 2005, 16 June 2008, available at http://www.armscontrol.org/act/2005_11/NOV-Suppliers.asp.

421 See Dafna Linzer, "Bush Officials Defend India Nuclear Deal," *Washington Post* 20 Jul. 2005: A17.

422 Renamed the House Committee on Foreign Affairs (HCFA) since the 110th

Secretary Rice “recommending the administration begin ‘substantive discussions with... respective committees as soon as possible before final decisions are made on any new legislative proposals.’”^{423, 424}

These conversations took place in eight separate hearings, held by the SFRC and HCIR, to determine the impact of the proposed agreement on nonproliferation.⁴²⁵ Chairman Lugar also specifically asked Undersecretaries Burns and Joseph to provide more details on the July 18 proposal⁴²⁶ and from the fall of 2005 through the spring of 2006, testimony was given by State Department heads as well as nuclear policy and international security experts. In November 2005, former State and Defense Department officials and arms control and nonproliferation authorities (including Leonard Weiss, Arms Control

Congress.

423 See Boese, “Suppliers Weigh Indian Nuclear Cooperation.”

424 In an “unusual public rebuke of the administration by a loyal Republican,” the *New York Times* records HCIR Chairman Henry Hyde using sharper language regarding the administration’s failure to seek congressional involvement in pursuing nuclear commerce with India, saying, “As it stands, the situation is both strange and unusual in that Indian authorities know more about this important proposal than we in Congress.” See Joel Brinkley, “U.S. Nuclear Deal With India Criticized by G.O.P. in Congress,” *New York Times* 31 Oct. 2005: A10.

425 Hearings by the House International Relations Committee are as follows: “The U.S. and India: An Emerging Entente?” (September 8, 2005); “The U.S.-India Global Partnership: The Impact on Nonproliferation,” (October 26, 2005); and “U.S.-India Global Partnership: How Significant for American Interests?” (November 16, 2005); “The U.S.-India Global Partnership” (April 5, 2006); “U.S.-India Global Partnership: Legislative Options,” (May 11, 2006). Testimonies available at <http://www.internationalrelations.house.gov>.

Hearings by the Senate Foreign Relations Committee are as follows: “U.S.-Indian Nuclear Energy Cooperation: Security and Nonproliferation Implications” (November 2, 2005); “U.S.-India Atomic Energy

Cooperation: The Indian Separation Plan and the Administration’s Legislative Proposal”

(April 5, 2006); and “U.S.-India Atomic Energy Cooperation: Strategic and Nonproliferation

Implications” (April 26, 2006). Testimonies available at <http://foreign.senate.gov/hearing.html>.

426 See both questions and responses in “The Administration’s Legislative Proposal and the July 18 Joint Statement,” questions for the record submitted by Under Secretaries Nicholas Burns and Robert Joseph by Chairman Richard G. Lugar, *Arms Control Association*, 2 Nov. 2005, 2 July 2008, available at http://www.armscontrol.org/pdf/20060117_India_Reponse_Lugar_Questions.pdf.

Association Director Daryl Kimball, and former State Department Nonproliferation and Export Policy Director Fred McGoldrick), sent a joint letter to Congress along with a list of questions for the administration.⁴²⁷ An analysis of the State Department's responses to Lugar's requests and the aforementioned letter, performed by authors of the November 2005 letter, concluded that "India's commitments under the current terms of the proposed arrangement [did] not justify making far-reaching exceptions to U.S. law and international nonproliferation norms."⁴²⁸ This analysis was sent to Congress in February 2006, urging legislators to "pursue additional stipulations that might result in a positive outcome to U.S. and international security," before enacting the proposal.⁴²⁹

Around the same time, a working group was created between Washington and New Delhi for a second round of negotiations on how India would "assume the responsibilities and practices" of other nuclear weapons states. Headed by Undersecretary Burns and Indian Foreign Secretary Shyman Saran, the group convened in September 2005 to negotiate a framework for separation of India's civilian facilities, which would fall under IAEA safeguards in accordance with the Joint Statement, from its military facilities, which would not. The two countries would soon sharply disagree on what constituted a credible separation plan.

The new U.S. ambassador to India, David C. Mulford, elaborated on U.S. opinion of India's reluctance to label a greater part of its reactors as civilian:⁴³⁰

427 See Hal Bengelsdorf, George Bunn, *et al.*, "Issues and Questions on the July 18 Proposal for Nuclear Cooperation with India," letter to members of Congress, *Arms Control Association*, 18 Nov. 2005, 2 July 2008, available at http://www.armscontrol.org/pdf/20051118_India_Ltr_Congress.pdf.

428 See Joseph Cirincione, Robert Grey, *et al.*, "Clarifying the Record on the July 18 Proposal for Nuclear Cooperation with India," letter to members of Congress, *Arms Control Association*, 14 Feb. 2006, 2 July 2008, available at http://www.armscontrol.org/pdf/20060214_India_Clarifying_Responses.pdf.

429 *Ibid.*

430 Ambassador Mulford assumed his post in 2004; Blackwill became deputy assistant to the president and then deputy national security advisor for strategic planning before departing the administration in late 2004.

What's a credible separation plan has to be something that is sufficiently believable to members of the U.S. Congress so that they would agree to alter the law and, in a way that would also be acceptable to the NSG of countries. The credibility test has to be pretty high in order to get that kind of support...⁴³¹

The nonproliferation lobby in Washington wanted to see a clear majority of Indian facilities fall under international safeguards, while the Indian nuclear community pressured New Delhi to keep "key facilities" free of U.N. inspectors.⁴³²

Despite the difficulty of the negotiations, an American state visit to New Delhi—the first for President Bush—was scheduled for March 1, 2006, when the administration anticipated announcing an agreed-upon separation plan. A week before the trip, Burns arrived in New Delhi to finalize the number of Indian reactors that would be subject to safeguards and to determine whether or not India's still-under-construction breeder reactor would be included. Though this visit resulted in an accord regarding the number of Indian reactors that would assume safeguards, questions on the permanence of safeguards remained.⁴³³ These issues may have become particularly unpalatable to Indian officials because the concern had not been previously stressed by State Department officials. However, permanent safeguards were a priority for arms control and nonproliferation experts in Washington, who aired their worries both in congressional hearings and to the administration. Fearing that the United States might be obligated to provide nuclear fuel for Indian reactors withdrawn from under international safeguards in the future, American negotiators pressed New Delhi for a commitment to permanent safeguards. On February 28, Secretary Rice was quoted at a press conference on Air Force One saying, "One thing that is absolutely necessary is that any agreement

431 See Ajay Kaul and V. Mohan Narayan, "India Must Put More Reactors in Civilian N-Program: US," *Rediff India Abroad* 29 Jan. 2006, 2 July 2008, available at <http://ia.rediff.com/news/2006/jan/29nddeal.htm>.

432 Mistry, 685.

433 India agreed to place 14 of 22 thermal reactors, but not the breeder reactor which was scheduled for completion in 2010, under international safeguards. Washington had pushed for the inclusion of the breeder reactor, but India held out and the U.S. eventually conceded.

would assure that once India has decided to put reactors [under] safeguards ... [they] remain permanently under safeguards.”⁴³⁴

With the separation plan still incomplete, negotiations leading up to the president’s visit to the subcontinent all but mirrored what had occurred in the days and hours preceding the Joint Statement. Weiss offered a critical assessment of the ongoing debate between the two countries:

To avoid the embarrassment of landing in New Delhi and then having to leave without an agreement, the president ordered the U.S. negotiators to settle all outstanding issues before the announcement. This gave the Indians the whip hand in the race to conclude an agreement. Thus, except for the unavoidable separation plan, India did not have to alter any aspect of its domestic or foreign policy in order for the announcement of a prospective U.S.-India nuclear agreement to go forward.⁴³⁵

On the morning of March 2, President Bush and Prime Minister Singh inked a deal in New Delhi in which India’s civilian reactors would be permanently safeguarded in return for a lifetime of fuel supply to be provided by the U.S. or, in the event of a dispute between the U.S. and India, other NSG members. Critics noted that this was not a win for U.S. negotiators as India remained responsible for determining which facilities were classified as civilian and military.⁴³⁶ This allowed New Delhi to keep its current and future fast-breeder reactors unsafeguarded—an issue viewed by the nation as “a matter of pride and sovereignty.”⁴³⁷ Nonetheless, the next step for the administration was to approach Congress with the agreement, now dubbed the Bush-Singh proposal.

434 See United States, Office of the Press Secretary, The White House, *Press Gaggle by Secretary of State Rice and National Security Advisor Hadley*, 28 Feb. 28, 2006, 28 June 2008, available at <http://www.whitehouse.gov/news/releases/2006/02/20060228-7.html>.

435 Weiss, 436-437.

436 See Elisabeth Bumiller and Somini Sengupta, “Bush and India Reach Pact That Allows Nuclear Sales,” *New York Times [East Coast]* 3 Mar. 2006, late ed.: A1.

437 Steven R. Weisman, “Dissenting on Atomic Deal,” *New York Times [East Coast]* 3 Mar. 2006, late ed.: A10.

Congress and U.S.-India Civil Nuclear Cooperation: March 2006-December 2006

The March 2006 Bush-Singh accord gave the impression that the agreement for U.S.-Indian civil nuclear cooperation was in its final stages. Lobbying efforts intensified in Washington as onlookers anticipated a congressional vote on the proposal. The Indian-American community was particularly energized by the deal and, along with the Indian government, actively sought support from Congressman Henry Hyde, Chairman of the HCIR. The U.S.-India Business Council (USIBC) was also heavily involved, and worked with what New Delhi Institute of Peace and Conflict Studies analyst Ashok Sharma termed “one of the leading and most expensive lobbying firms in Washington, D.C.,” Patton Boggs. The same firm had also been reportedly hired by the Indian government for \$1.3 million to spearhead a “concerted lobbying campaign.”⁴³⁸ Former Ambassador Blackwill fronted the effort, which was also backed by U.S. business interest groups.⁴³⁹

However, not everyone in the Republican administration or party, which held a majority in Congress at the time, was amenable to the idea of regular nuclear commerce with India on irregular terms. According to Sharma, “Anti Indo-U.S. nuclear lobby groups and nonproliferation activists like David Albright,” along with several House members and select State Department officials, remained firmly opposed to offering nuclear concessions to India.⁴⁴⁰ Besides concerns for the sanctity of the global nonproliferation regime, some in the opposition also took issue with India’s ties to Iran.

Such concerns arose from incidents of technology transfers between the two countries, as well as reports that India’s navy was assisting the Iranian military. In the fall of 2006, nonproliferation expert Henry Sokolski wrote that State Department officials tried “every which way to deny” the fact that India’s navy was not only

438 Ashok Sharma, “Indo-US Nuclear Deal: Intense Lobbying,” *Institute of Peace and Conflict Studies*, 24 Jun. 2006, 2 Jul. 2008, available at http://www.ipcs.org/India_articles2.jsp?portal=india&keyWords=DOMESTIC&action=showView&kValue=2063&country=1014&status=article&mod=a&keyArticle=1014.

439 Ibid.

440 Ibid.

helping Iran construct a base with access to the Indian Ocean, but conducting joint naval exercises with Tehran. Additionally, “over the last 20 months, the State Department [had] sanctioned no fewer than seven separate Indian entities for transferring strategic weapons-related technology or goods to Iran.”⁴⁴¹ In fact, revered Indian nuclear scientists Dr. Y. S. R. Prasad and Dr. C. Surendar had both been cited under the 2000 Iran Nonproliferation Act for transferring sensitive technologies to Tehran.⁴⁴²

This was one of several issues facing Congress as it prepared to review the Bush-Singh accord. The president wasted no time after his return from New Delhi and, within a matter of days, submitted a proposal to Congress for legislation that would allow the U.S. and India to negotiate a 123 Agreement (H.R. 4976 and S. 2429). The president did not immediately submit a formal 123 Agreement directly to Congress because certain Atomic Energy Act stipulations prohibited negotiating such an agreement with India. For example, Section 129 of the AEA disallowed nuclear cooperation with a country that had conducted a nuclear test. With congressional sanction, this requirement could be waived under select conditions⁴⁴³. Even if Congress approved a waiver, however, nuclear exports to India would have to be appropriately licensed before they could commence. If only India’s civilian facilities fell under safeguards, the AEA would prohibit the issuance of licenses and prevent cooperation. The president can side-step the license requirement by issuing an executive order authorizing the export license “if the President determines that withholding the proposed export would be seriously prejudicial to the achievement of United States nonproliferation objectives.”⁴⁴⁴ However, this order would have to be submitted to Congress for a review period of sixty days, during which time Congress could reject the order or condition it before it came into effect.

441 Ibid.

442 Both men were also former heads of the state-run Nuclear Power Corporation of India.

443 These conditions are listed in Section 129a(2)(C) of the 1954 AEA as: if “the President determines that cessation of such exports would be prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security.”

444 See Section 126(b)(2) of the 1954 AEA.

Thus, in March 2006, nuclear cooperation with India could only proceed under the terms of a 123 Agreement if the President used his waiver authority, ordered export licensing, and encountered little congressional opposition. The likelihood of congressional support was not guaranteed, as the proposal represented a major policy reversal. To avoid legal hurdles, the president instead asked Congress to pass legislation excepting India from certain AEA provisions. This would allow the White House to finalize a formal bilateral agreement with India.

After holding hearings in April and May, the HIRC and SFRC respectively considered the House and Senate versions of the proposal. In mid-November of the same year, the Senate, “insist[ing] on its amendment... incorporated the text of S. 3709, as amended, into H.R. 5682 and passed that bill” by a majority vote.⁴⁴⁵ A conference was held in early December to reconcile the two bills, and by December 9, 2006, H.R. 5682 had been passed by Congress.

The administration had pushed Congress to endorse the deal before summer recess at the end of July, but several issues delayed finalization until December. In May, after hearing from a number of senior administration officials including Secretary Rice, ranking HIRC Democrat and deal proponent Tom Lantos acknowledged that while many in Congress supported the agreement, many others did not.⁴⁴⁶ Key lawmakers, like Committee Chairmen Lugar and Hyde, remained neutral. With the mid-year recess looming, Lantos noted, “There is not time to develop the consensus necessary to move this legislation forward in the face of these polarized views. Yet there is an urgency to move forward on this issue.”⁴⁴⁷

One of the considerations that firmly divided Congress was the fact that if they approved the proposed legislation as submitted by

445 See Sharon Squassoni and Jill Marie Parillo, *U.S.-India Nuclear Cooperation: A Side-by-Side Comparison of Current Legislation*, CRS Report for Congress, (Washington, D.C.: The Library of Congress, 22 Nov. 2006) Summary, 6 June 2008, available at <http://fas.org/sgp/crs/nuke/RL33561.pdf>.

446 See Aziz Haniffa, “Lantos Suggests Compromise Legislation on N-Deal,” *Rediff News* 12 May 2006, 6 June 2008, available at <http://www.rediff.co.in/news/2006/may/12ndeal.htm>.

447 Ibid.

the administration, the 123 Agreement could then be drafted and implemented without subsequent Congressional review. Congress found this problematic due to the seemingly lax terms of the March 2006 Bush-Singh accord. While India had agreed to safeguard its civilian facilities, New Delhi had pointedly left its operational and prototype “fast-breeder” reactors off the “civilian” list. These reactors aroused particular concern because they are capable of creating substantial amounts of fissile materials for nuclear weapons, as they produce more of those materials than they consume. The Bush-Singh accord made no mention of limiting India’s ability to produce fissile material; in fact, the proposed U.S. supply of fuel would theoretically allow India to produce considerably more nuclear weapons per year.⁴⁴⁸ Instead of restraining the proliferation of weapons-grade materials, the administration’s proposal might enable it. This made Congress uncomfortable.

To compromise, Lantos suggested that:

Congress... not immediately make all of the changes to the [AEA] sought by the administration which are necessary to implement this agreement... and vote on the bilateral agreement for cooperation once the negotiation has been completed... whether it’s a week from now, six months from now or in a year from now... The Administration would also be required to consult monthly with Congress as the negotiations continue with the Indian government. This provision will ensure that there are no misunderstandings between the Executive and Legislative branches as to what Congress will be asked to accept.⁴⁴⁹

The State Department initially rejected the compromise, most likely because it would obviously hinder what some saw as the administration’s “exceptionally aggressive time schedule” for implementing the agreement.⁴⁵⁰ Facing continued stagnation in

448 U.S. fuel supply assurances would theoretically allow India to divert current fissile-material stockpiles into their weapons program. Under the terms of the March 2006 Bush-Singh accord, India could conceivably divert enough weapons-grade materials to produce fifty weapons per year (up from its regular capacity of seven to ten weapons per year).

449 Haniffa, “Lantos Suggests Compromise Legislation on N-Deal.”

450 Kapisthalam claims informed sources in Washington and New Delhi and told

Congress, the administration resigned itself to the action after a Council on Foreign Relations' report endorsed the Lantos proposal in June 2006.⁴⁵¹ In return, both Houses of Congress demonstrated strong bipartisan support for the agreement by overwhelmingly approving related bills. On December 18, 2006, President Bush signed the embodiment of the compromise, H.R. 5682 (presently known as the Hyde Act, so named after the late Representative Henry Hyde), into law. The administration now had a legal framework to begin negotiating the actual 123 Agreement for nuclear cooperation with India.

The 2006 Henry J. Hyde Act

The Henry J. Hyde Act conditioned the administration's initial proposal by requiring that certain measures be met before Congress would vote on the 123 Agreement. Section 104, the core of the legislation, authorized the president to waive, with respect to India, the application of the AEA requirements that precluded U.S.-Indian nuclear trade (such as India's past nuclear tests and presently limited safeguards).⁴⁵² This waiver authority depended on a number of factors, such as:

1. Demonstration that India was working towards an Additional Protocol agreement with the IAEA, and strengthening its nuclear export control laws and policies to mirror those of the MCTR and NSG;
2. A permanent safeguards agreement between India and the IAEA that would allow international inspectors to verify further that U.S. nuclear supplies were reaching their intended destinations;

the newspaper that Secretary of State Condoleezza Rice promised Indian officials that the deal would be passed by June 2006.

451 See Michael A. Levi and Charles D. Ferguson, *U.S.-India Nuclear Cooperation: a Strategy for Moving Forward*, Council Special Report No. 16, (New York: Council on Foreign Relations, Jun. 2006), 2 May 2008 available at <http://www.cfr.org/content/publications/attachments/USIndiaNuclearCSR.pdf>.

452 For relevant Hyde Act excerpts, see "Hyde Act: Relevant Excerpts," *Mainstream* 45.38 (2007), 6 July 2008 available at <http://www.mainstreamweekly.net/article305.html>.

3. An agreement with the NSG that allowed, by consensus, "... an exception to its guidelines specifically for India..." and stipulated "...that no U.S. exports may be transferred to India that do not comport with NSG guidelines and decisions."⁴⁵³

Supplier countries are normally disallowed from trading with states that do not accept full safeguards on all nuclear facilities. The exception would specifically allow for trade with India's civilian facilities, as delineated by the March 2, 2006, Bush-Singh accord.

The act also required the president to keep the HIRC and SFRC "fully and currently informed of all the facts and implications of any significant nuclear activities with India."⁴⁵⁴ In addition, the S. 3709 provision required the president to submit an annual report on India's compliance with its nonproliferation commitments to relevant congressional committees. Finally, if India conducted a future nuclear test, terminated or abrogated IAEA safeguards, the Hyde Act insisted that U.S. nuclear cooperation cease. If India took any of these actions, the U.S. also retained a right of return on all materials and technologies it had supplied to the subcontinent.

Explaining Congress' rationale for conditioning the administration's proposed legislation, the House-Senate conference committee responsible for drafting the final version of the Hyde Act reported in an accompanying joint statement that:

In effect, the Administration's proposal would have given it excessive latitude in negotiating a nuclear cooperation agreement with India, leaving Congress with little ability to influence the terms of that agreement, regardless of any concerns it might have... both [Senate and House Committees] rejected this approach, believing that the Administration's proposal did not provide for appropriate congressional oversight over what was, by any measure, an unprecedented nuclear cooperative relationship with India. Both committees were troubled by the lack of consultation by

453 United States Congress, *Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006* 109th Cong., 2nd session, HR 5682 (Washington: GPO, 2006) 4, 18 May 2008 available at http://www.foreignaffairs.house.gov/archives/109/H5682CR_HSE.pdf.

454 See Section 104(c)(5)(1), or *Ibid.*, 23.

the Administration with Congress before the July 18, 2005 Joint Statement and the March 2006 U.S.-India Declaration (in which the terms by which India would separate its civil and military nuclear facilities and further commitments by the United States were announced).⁴⁵⁵

In short, Congress sought to restore its oversight role by retaining the process of congressional approval, which by circumstance or design, the administration's proposed legislation had initially circumvented.

Constituencies both within and close to the Indian government reacted strongly to the terms of the Hyde Act—in particular, the legislation's injunction against the transfer of reprocessing technology and future nuclear testing. Indian nuclear experts maintained that “India must not directly or indirectly concede our right to conduct future nuclear weapon tests, if these are found necessary to strengthen our minimum deterrence.”⁴⁵⁶ Facing growing opposition to the deal from parties across the Indian political spectrum (and even within his own party), the prime minister's minority coalition government seemingly possessed insufficient political capital to push the proposal through under the terms favored by the U.S. Congress. With public support fragmenting over fears of lost Indian sovereignty and foreign policy independence, and harangued at times by an intensely attentive media willing to politicize the agreement, Prime Minister Singh spoke out against the new restrictions. In an August 2006 address to Parliament, the prime minister stated:

We seek the removal of restrictions on all aspects of cooperation and technology transfers pertaining to civil nuclear energy ranging from nuclear fuel, nuclear reactors, to reprocessing spent fuel, that is, all aspects of a complete nuclear fuel cycle... We will not agree to any dilution that would prevent us from securing the benefits of full civil nuclear cooperation... We are not willing to accept a moratorium on the production of fissile material. The U.S. has been intimidated

455 ---, *Henry J. Hyde...Act 3*.

456 See “Hyde Act and Nuclear Scientists Note,” *The Hindu* 16 Dec. 2006, online ed., 18 May 2008, available at <http://www.thehindu.com/2006/12/16/stories/2006121616171500.htm>.

that reference to nuclear detonation... [a]s a condition for nuclear cooperation is not acceptable to us.⁴⁵⁷

To allay India's fears, President Bush announced when he signed the Hyde Act into law, that he would view certain sections of the act as advisory. This was done by a "Presidential Signing Statement," or, a written statement used to clarify an administration's constitutional position.⁴⁵⁸ The president noted, "My approval of the Act does not constitute my adoption of the statements of policy as U.S. foreign policy. Given the Constitution's commitment to the presidency of the authority to conduct the Nation's foreign affairs, the executive branch shall construe such policy statements as advisory."⁴⁵⁹ The provisions of the Hyde Act were further hedged by other "deliberative processes of the Executive" that would "mandate, regulate or prohibit submission of information to Congress, an international organization or the public."⁴⁶⁰

The president's statements notwithstanding, on the same day the Hyde Act was signed into law Prime Minister Singh reportedly "told the Indian Parliament that the U.S. law on the civil nuclear deal contained 'areas of concern' that will be clarified in further 'difficult' negotiations with Washington," on the text of the actual 123 Agreement.⁴⁶¹ These negotiations would take nearly seven months to complete.

The July 2007 123 Agreement and Beyond

The U.S. negotiating team participating in 123 Agreement dialogue was helmed by Director of the Department of State (DOS) Nuclear Division Richard Stratford. Members of the team included

457 Cited in Weiss, 455.

458 United States, Office of the Press Secretary, White House, *President's Statement on H.R. 5682, the "Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006,"* 18 Dec. 2006, 13 May 2008, available at <http://www.whitehouse.gov/news/releases/2006/12/20061218-12.html>.

459 This is in reference to Sections 103 and 104 (d)(2) of the HA.

460 This included Sections 104, 109, 261, 271-5, of the HA.

461 Cited in "Bush Enacts Civil Nuclear Agreement with India," *Environmental News Service* 18 Dec. 2006, 15 June 2008, available at <http://www.ens-newswire.com/ens/dec2006/2006-12-18-06.asp>.

representatives from the NRC; State, Commerce, and Energy Departments; and ISN representatives, along with Ashley J. Tellis, who was assigned as a senior advisor to the undersecretary of state for political affairs. On the Indian side, Joint Secretary for External Affairs Dr. S. Jaishankar, Ambassador Shyman Saran and his successor, Foreign Secretary Shiv Shankar Menon assumed principal roles, along with representatives from the Ministry of External Affairs, the Department of Atomic Energy, and the prime minister's office. Participants shuffled around as delegations from both sides met for at least five rounds of talks: from June 12–14, 2006 in New Delhi; March 25–27, 2007 in New Delhi; April 16–19, 2007 in Cape Town; May 21–22, 2007 in London; and May 31–June 2, 2007 in New Delhi.⁴⁶²

On July 17, 2007, an Indian delegation led by National Security Advisor M. K. Narayanan traveled to Washington to meet with National Security Advisor Hadley and Undersecretary Burns in hopes of finalizing the text. At the meeting, the “usually unflappable” Burns had already expressed Washington's frustrations with New Delhi for holding up the agreement.⁴⁶³ One concern that had led to an impasse in negotiations was the issue of reprocessing. India sought an unencumbered right to reprocess any U.S. origin spent fuel in its own facilities, while the U.S. insisted on joint consent. The matter was ultimately resolved by each party granting the other reprocessing rights in advance. In order to “bring this reprocessing into effect... India would first establish a new, national facility under IAEA safeguards dedicated to reprocessing safeguarded nuclear material.”⁴⁶⁴

462 India, Press Information Bureau, Embassy of India, *123 Agreement Of Civil Nuclear Power: External Affairs Minister, Mr. Pranab Mukherjee's Written Reply In Rajya Sabha*, 3 May 2007, 15 June 2008, available at http://www.indianembassy.org/newsite/press_release/2007/May/4.asp and Sadiq Ali, “Indo-US nuclear deal talks resume from Tuesday,” *Newstrack India* 28 May 2007, 15 June 2008, available at <http://www.newstrackindia.com/newsdetails/219>.

463 Aziz Haniffa, “US Angry with India Over Delay in N-Deal,” *Rediff India Abroad* 13 Apr. 2007, 6 Jul. 2008, available at <http://www.rediff.com/news/2007/apr/13nddeal.htm>.

464 See United States, Under Secretary for Political Affairs, Department of State, *On-The-Record Briefing on the Status of the U.S.-India Civil Nuclear Cooperation Initiative and the Text of the Bilateral Agreement for Peaceful Nuclear Cooperation (123 Agreement)*, by R. Nicholas Burns, 27 Jul. 2007, 13 June 2008 available at <http://www.state>.

These safeguards would be in perpetuity, and all reprocessed fuel would be applied only to peaceful purposes. A guaranteed and permanent supply of fuel was also of vital importance to New Delhi, as Indian officials wanted to ensure access to enriched uranium.⁴⁶⁵ A bargain was struck during negotiations in which the U.S. “supported the creation of an Indian strategic fuel supply [and] commit[ed] to help India gain access to the international fuel market”⁴⁶⁶,⁴⁶⁷ In short, India accepted unending safeguards in return for American fuel assurances.

After four days of grueling negotiations between the U.S. and Indian teams, the 123 Agreement was reportedly finalized on July 20, 2007.⁴⁶⁸ One week later, Secretary Rice and Indian Minister of External Affairs Pranab Mukherjee released a joint statement “attesting to the fact that the United States and India have completed successful negotiations on this bilateral agreement.”⁴⁶⁹ The text of the accord had taken over 300 working hours to complete.⁴⁷⁰ However,

gov/p/us/rm/2007/89559.htm.

465 In essence, India felt it would face a vital national security threat if China or Pakistan decided to test a nuclear weapon, and wanted to retain the ability to choose to respond in kind without terminating the bilateral agreement with the U.S. Since the HA mandated that any future Indian nuclear test would terminate the agreement, India sought assurances for an alternative origin of supply.

466 See ---, ---, ---, *On-The-Record Briefing*.

467 Critics had pointed out that it seemed the 123 Agreement was at odds with the “nonbinding provisions of the Hyde Act that urge Washington to limit India’s access to fuel supplies from other countries in the event of a termination of the bilateral agreement.” But proponents argued that “the 123 Agreement language does not violate the Hyde Act since the fuel access provisions are a part of the agreement itself and would terminate along with the agreement if, for example, an Indian nuclear detonation triggered Section 106 of the Hyde Act terminating U.S. -India civil nuclear cooperation.” Lisa Curtis and Baker Spring, “U.S. Nuclear Agreement with India: An Acceptable Deal for a Major Strategic Gain,” *WebMemo #1587* 14 Aug. 2007, 5 July 2008, available at <http://www.heritage.org/Research/AsiaandthePacific/wm1587.cfm>.

468 In Aziz Haniffa, “Tellis on the Inner Workings of the 123 Agreement,” *Rediff India Abroad* 2 Aug. 2007, 15 May 2008, available at <http://www.rediff.com/news/2007/aug/02nddeal.htm>, Tellis reports negotiations were completed at 2 PM on Friday, July 20. The deal was not made public until a week later, presumably to allow time for India’s government to consent.

469 See ---, ---, ---, *On-The-Record Briefing*.

470 Chidanand Rajghatta, “US-India Nuke Deal: 1..2..3..Go,” *Times of India* 22 Jul.

Washington and New Delhi were reluctant to release the document, which was not made public until August 3. This was presumably to allow New Delhi time to quietly brief allies and key opposition leaders, and get a final seal of approval, before exposing the event to media and public scrutiny.⁴⁷¹ Ambassador Mulford further explained Washington's position stating, "We are not at this moment under a compulsion to release the text because we do not have legislation put before the Congress."⁴⁷²

The delay fueled U.S. lawmakers' concerns over the accord. House Committee on Foreign Affairs (HCFA) member Representative Howard L. Berman reported that he and several legislators were "disturbed... we have said, 'You're not going to get anything if you resume nuclear testing.' But now we're making an agreement that India will get a fuel supply even if it resumes testing."⁴⁷³ By October, the HCFA had submitted a lengthy set of questions on the pending agreement to the State Department. The department responded to the inquiry, but asked the committee to keep its answers secret, even from other lawmakers. Five months later, nonproliferation experts called on the State Department to make the responses public.⁴⁷⁴ A May 9, 2008, *Washington Post* article concluded that these answers had not been leaked, "in part because only a handful of congressional officials have been able to read them."⁴⁷⁵ Other explanations for secrecy have been advanced as well. According to the *Post*, the order

2007, 2 June 2008, available at http://timesofindia.indiatimes.com/US-India_nuke_deal_1_2_3go/articleshow/2223742.cms.

471 Ibid.

472 United States, Embassy News, Department of State, *Speeches and Remarks 2007*, telephonic press conference by David C. Mulford, 30 Jul. 2007, 15 May 2008, available at <http://newdelhi.usembassy.gov/ambjuly3007.html>.

473 See Robin Wright and Emily Wax, "U.S. and India Finalize Controversial Nuclear Trade Pact," *Washington Post* 28 Jul. 2007: A14.

474 "Nonproliferation Experts Call on State Department to Come Clean on Questions Concerning U.S.-Indian Nuclear Deal," *Arms Control Association*, 5 Mar. 2008, 2 July 2008, available at http://www.armscontrol.org/pressroom/2008/20080305_State_India.asp.

475 Greg Kessler, "State Department Asks Congress to Keep Quiet About Details of Deal," *Washington Post* 9 May 2008, 16 June 2008, available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/05/08/AR2008050803427.html>.

to keep the information secret was due to the shaky—even desperate—status of the U.S.-Indian deal. An HFCA spokesperson additionally allowed, “Some of the data [revealed by State] might be considered diplomatically sensitive.”⁴⁷⁶

After the 123 Agreement text was released, opposition in India solidified. Parliament’s Left and Communist parties decried the accord and threatened to withdraw their support if the government moved forward. In November 2007, New Delhi began negotiating a safeguards agreement with the IAEA. The text was finalized in March 2008, but needed approval from the Indian parliament before it could be sealed. Parliamentary approval was expected to be difficult to obtain. If New Delhi signed a safeguards pact with the IAEA (which it must do before the U.S. Congress can vote in favor of the 123 Agreement), it would not be easy for India to unbind itself from that pact even if the future nuclear cooperation agreement is rejected by Congress.⁴⁷⁷ New Delhi is likely to look for reassurance from Washington that Congress will vote in favor of the agreement.

After putting the tentative safeguards agreement to a confidence vote and in spite of the Left’s withdrawal of support for the minority coalition government, India circulated the agreement to the IAEA Board of Governors for review. Walking a tightly strung political balance, the prime minister’s party cautiously stopped short of labeling the event a formal act.⁴⁷⁸ As of late-July 2008, G-8 leaders at a recent Tokyo summit indicated that the NSG and IAEA would probably support the deal.⁴⁷⁹ Still, the NSG has declined to consider exemption from its guidelines for India until the IAEA safeguards agreement is complete in order to “consider the extent of

476 Ibid.

477 New Delhi had made efforts to decouple India’s IAEA and NSG talks from the 123 Agreement in order to appease Left front parties. Left parties did not want to see the deal move forward with the U.S., but were not averse to such civil nuclear cooperative agreements being struck with Russia and France.

478 See “Won’t approach IAEA before trust vote: Gov’t,” *ExpressIndia.com* 11 Jul. 2008, 13 July 2008, available at <http://www.expressindia.com/latest-news/Wont-approach-IAEA-before-trust-vote-Govt/334366/>.

479 See “G8 says to work with India, IAEA on non-proliferation,” *Reuters* 9 Jul. 2008, 10 July 2008, available at <http://in.reuters.com/article/topNews/idINIndia-34439720080709>.

oversight on Indian facilities in their final decision.²⁴⁸⁰ Once again, Congressman Berman expressed unease saying, "I'm concerned about the NSG. As I understand it, the U.S. representative to that body has circulated a clean exemption for India that doesn't reflect any of the restrictions contained in the Hyde Act."⁴⁸¹ During a February visit to New Delhi, SFRC Chair Joseph Biden informed the Prime Minister that "If [the 123 Agreement] is not ratified by Congress by July-end (when Senate goes into recess), there is no prospect of it [being ratified during the tenure of the Bush administration] ... if we do not have the deal now, it is highly unlikely that the next president will present the same deal to India."⁴⁸²

Biden and Berman's fears were not unfounded. In September 2008, following nine months of secrecy, the content of the State Department letter to the NSG was finally made public by Representative Berman. This revelation came just as the NSG was meeting for a second time to decide whether to agree to an exemption for India. A significant number of nations already proved reluctant to agree to the draft terms circulated by the United States. The *Washington Post* reported the unfortunate timing of the letter, "Berman's release of the correspondence could make [NSG] approval even more difficult because it demonstrates that U.S. conditions for nuclear trade with India are tougher than what the United States is requesting from the NSG on India's behalf."⁴⁸³ State Department responses shed light on the fact that the U.S. had no intention of meeting India's demands to continue to supply fuel in the event of a nuclear test or failure to meet nonproliferation commitments, nor to assist India with

480 Sharad Joshi, "A Pause in the Indo-US Nuclear Agreement," *NTI Issue Brief* 2 May 2008, 29 June 2008, available at http://www.nti.org/e_research/e3_Indo_US_nuclear_agreement.html.

481 "Rice Insists on Hyde Act for Accord with NSG," *The Hindu* 15 Feb. 2008, online ed., 29 June 2008 <<http://www.thehindu.com/2008/02/15/stories/2008021560281500.htm>>.

482 Cited in Praful Bidwai, "INDIA/US: Last Ditch Push for Nuclear Deal," *IPS-Inter Press Service* 22 Feb. 2008, 2 June 2008 <<http://ipsnews.net/news.asp?idnews=41309>>.

483 Glenn Kessler, "In Secret Letter, Tough U.S. Line on India Nuclear Deal," *Washington Post* 3 Sept. 2008: A10.

the development of “sensitive nuclear technologies.”⁴⁸⁴, ⁴⁸⁵ Even so, anticipating NSG approval, the administration likely hoped to reassure lawmakers of its intentions to see the Hyde Act finally approved in the waning days of the congressional calendar year.

On September 6, 2008, the NSG agreed to exempt India from its guidelines and allow the United States to supply the subcontinent with nuclear fuel.⁴⁸⁶ The accord awaits ratification by Congress, which must be in 30 days of continuous session to consider the pact. Because Congress adjourns at the end of this September, the deal may pass over to the next administration. Secretary Rice, while traveling in North Africa, expressed a desire to bypass the 30-day provision.⁴⁸⁷ As of September 8, the matter is not on the congressional agenda.

Analysis of Foreign Policy and Process

Having described the key processes and events that led to the proposed U.S.-India nuclear cooperation agreement, the case now returns to the four guiding questions outlined at the beginning of the study. The following analysis considers each of the previously stated questions:

1. Did the U.S. government generally act in an *ad hoc* manner or did it develop effective strategies to integrate its national security resources?

484 Ibid. Unsurprisingly, the letter was not well received by India. Opposition parties joined together in “demand[ing] [Prime Minister] Singh’s resignation for alleged lying to Parliament.” Like the United States, India also faces upcoming elections and “the nuclear is shaping up as a major issue of the campaign.” Rama Lakshmi, “U.S. Letter Puts India’s Premier on Defensive Over Nuclear Deal,” *Washington Post Foreign Service*, 5 Sept. 2008: A15.

485 Unsurprisingly, the letter was not well received by India. Opposition parties joined together in “demand[ing] [Prime Minister] Singh’s resignation for alleged lying to Parliament.” Like the United States, India also faces upcoming elections and “the nuclear is shaping up as a major issue of the campaign.” Rama Lakshmi, “U.S. Letter Puts India’s Premier on Defensive Over Nuclear Deal,” *Washington Post Foreign Service*, 5 Sept. 2008: A15.

486 See Heather Timmons, “Atomic Club Lifts Ban on Trade With India,” *New York Times*, 7 Sept. 2008: A8.

487 Rama Lakshmi and Glenn Kessler, “International Group Backs Nuclear Accord for U.S., India,” *The Washington Post*, 7 Sept. 2008: A18.

2. How well did the agencies and departments work together to implement these *ad hoc* or integrated strategies?
3. What variables explain the strengths and weaknesses of the response?
4. What diplomatic, financial, and other achievements and costs resulted from these successes and failures?

1. An Ad Hoc Strategy of Selective Proliferation

It would be difficult to conclude that the U.S. government did not act in an *ad hoc* manner when developing and advancing the U.S.-Indian nuclear agreement. While Washington sought to integrate India with the present nonproliferation regime through civil nuclear cooperation, it did not devise a lasting strategy to adjust the existing nonproliferation regime (and relevant U.S. laws and policies) in a manner that would both minimize emergent proliferation challenges and render present norms more relevant for future, responsible, *de facto* nuclear weapons states. This kind of strategy would have maintained an incentive for nations that have contravened their NPT commitments or remain outside the treaty to change their behavior or join the global regime. Instead, to discourage other nuclear states outside the NPT (like Pakistan) from seeking similar agreements with the U.S., the administration has repeatedly affirmed that the nuclear deal is unique and available only to India. Such an *ad hoc* nuclear cooperation initiative designed to achieve the administration's greater strategic aims is less than optimal for four critical reasons.

First, in creating a unique country agreement, the administration's approach failed to address the growing inability of current nonproliferation policy to accommodate contemporary nuclear realities because the India-specific adjustment of U.S. and international laws to allow for the agreement have little applicability

beyond their Indian orientation (at least, this is the administration's iterated intention). Thus, there is no strategy for open application that might better meet the greater challenge of balancing nonproliferation objectives with other geo-strategic and security concerns.

National defense expert Baker Spring points out that the broader issue for the U.S. lies with the need for a new strategic framework. This necessity results from the fact that in a post-Cold War era, regional security issues are not simply "subsumed into the U.S.-Soviet confrontation" and consequently have become far more complicated.⁴⁸⁸ U.S. and international nonproliferation policies presently fail to reflect these complexities and thus remain unrefined and less than judicious.⁴⁸⁹ In Spring's opinion:

Post-Cold War regional tensions in places like South Asia have made it increasingly clear that the U.S. needs to open a second track in its overall nuclear nonproliferation policy. The first track constitutes the existing global nuclear nonproliferation regime defined by the NPT. The second track needs to focus on addressing regional security imbalances that motivate non-weapons states to seek nuclear weapons. The trick is to fashion policies and programs in the second track that will encourage non-weapons states under the treaty that nevertheless seek to possess nuclear weapons (*de facto* nuclear weapons states) to join or rejoin the NPT, as well as encourage other non-weapons states now within the regime to stay there.⁴⁹⁰

Instead of adding nuance to the nonproliferation regime, the *ad hoc* strategy for Indian integration at times challenges it. This is partly because the Bush-Singh agreement addresses regional security imbalances through what could be termed "selective proliferation." By actively contributing to an increase, rather than a decrease, in

488 See Baker Spring, "India and a Two-Track Policy to Combat Nuclear Proliferation: Guidelines for Congress to Balance Regional Security with Nonproliferation," *WebMemo #810*, 29 July 2005, 5 Jul. 2008 <<http://www.heritage.org/Research/AsiaandthePacific/wm810.cfm>>.

489 *ibid.*

490 *Ibid.*.

the amount of fissile materials, the U.S. extends the opportunity for dissemination of weapons-grade materials.⁴⁹¹ Washington also appears to be advancing the notion of proliferation among strategic allies regardless of their position relative to the formal nonproliferation framework codified in the NPT. Further, by side-stepping the established nuclear cooperation framework, it can be argued that the administration devalues or weakens it. India seeks recognition as a *de jure* weapons state which is a status that, until now, has been defined and bestowed by the NPT. There is something incongruous about extending this recognition to a country not bound by the same treaty, especially when the stated end goal of U.S. nuclear cooperation with India is to bring the country under the umbrella of the NPT, thereby strengthening the nonproliferation regime.

The incentive drawing states to join and remain party to the NPT is damaged when a nuclear supplier proves willing not only to provide fuel and other sensitive matter to a non-NPT state with a nuclear weapons program, but to do so on wholly exceptional terms. A strategy that is not purpose-specific could have resulted in a greater strategic gain for the U.S. and left American nonproliferation goals equally intact. One can reasonably assume the overall objective of the Bush administration is not to weaken the nonproliferation regime or damage NPT mores. If an *ad hoc* strategy appears to do just that, then, it cannot be considered optimal and its efficacy is questionable.

Second, the informal strategy failed to integrate U.S. national security resources successfully in its approach to nuclear cooperation with India as there was a large schism in the national security apparatus between the executive and legislative branches of government. The Bush-Singh framework had been a delicate one, taking almost eight months following the Joint Statement to complete. The administration

491 Perkovich tells the Council on Foreign Relations in 2007 that, "...The administration didn't really seek and didn't get an agreement by India to limit its production of nuclear weapons... we didn't get it and we didn't seek it because some in the administration actually want India to build more nuclear weapons as a counter to China. I think that's a mistake." George Perkovich, interview with Bernard Gwertzman, *Gwertzman Asks the Experts*, Council on Foreign Relations, 13 Aug. 2007, 6 July 2008, available at <http://www.cfr.org/publication/14026/perkovich.html>.

had hoped for swift legislative approval of its actions. Yet, during the two sets of negotiations with India that followed the Joint Statement (the first set culminated in the 2006 Bush-Singh accord; the second set completed the 123 Agreement in 2007) the administration was not forthcoming about the details of the negotiations. Consequently, relevant congressional committees, and nonproliferation elements, were precluded from any meaningful input into or oversight of the process (recall John Rood, the lone senior nonproliferation expert in the final round of negotiations preceding the Joint Statement). This opened the door for resistance on principle mainly from Congress, but also from nonproliferation elements within executive agencies and outside government.⁴⁹² Congress reacted negatively by reinstating an oversight role for itself even though it was generally amenable to the executive branch's overall vision. The creation of a more hostile atmosphere in Congress had a direct, detrimental effect on the progress of the initiative because when Congress slowed the pace of policy implementation by conditioning the future agreement via the Lantos compromise and the Hyde Act, opposition within the Indian parliament caught up to Prime Minister Singh. In failing to properly involve or even manage Congress, the administration's strategy effectively stalled the approval process, which splintered Indian support for the agreement.

Third, the administration's decision to rely on influential policy makers to achieve its desired cooperative agreement was not entirely efficient. To a certain extent, this is because the administration's strategy was not the product of a systematic policy review. Instead, the approach was heavily influenced by the individual worldviews of several high-level officials. Key proponents of the deal—Blackwill, Burns, Hadley, Joseph, Rice, Zelikow, and Zoellick, among others—occupied critical positions of influence and seized opportunities to advance and negotiate nuclear cooperation with India, especially after Powell's 2005 departure from the State Department. The appointments of these individuals deliberately reinforced the administration's vision for India. The *Asia Times* asserts that, "Zelikow [was] known to be one of the key proponents of close US-India ties and was appointed to the State Department to ensure that the traditionally non-proliferation-

492 See Levi and Ferguson 6.

obsessed U.S. diplomatic bureaucracy stays true to the vision behind the US-India nuclear deal.”⁴⁹³

Nonetheless, the executive branch faced significant internal opposition, perhaps due to the strength and clarity of these individual visions, which contrasted sharply with historical departmental nonproliferation attitudes. Selig Harrison, a noted South Asia expert, concluded that:

Under Secretary of State for Non-Proliferation Robert Joseph, David Addington from Vice President Dick Cheney’s office, and John Rood, the non-proliferation specialist at the National Security Council advising the White House... known to be an ally of his predecessor and current U.S. representative at the United Nations, John Bolton... [were] trying to sabotage the deal.⁴⁹⁴

Harrison thought opponents within the administration had successfully impeded the deal “through leaks to the media and tips to congressional staff.”⁴⁹⁵ It would appear then that the White House was forced to rely even more heavily on the ability of influential proponents who had to counter opposition within their own departments and agencies. This may have contributed to the administration’s tendency to cloak negotiations in secrecy and classify relevant information.

The manner in which the White House approached policy implementation was deliberate. A senior U.S. official cited in the *Washington Post* and speaking on condition of anonymity, described a 2005 State Department briefing held immediately after the prospect of nuclear cooperation had been offered up to India by Rice stating: “We had been thinking about this question: How much should you go for? Would an incremental approach be better, would it be more easily digestible [by Congress]? ... We decided to go for the big bang.”⁴⁹⁶ The deal would have probably been better served had support been

493 Kapisthalam, “India’s US Nuclear Deal Hangs by a Thread.”

494 Ibid.

495 Ibid.

496 See Kessler, “India Nuclear Deal May Face Hard Sell.”

organically sourced or better cultivated within government, instead of generated and directed by a handful of visionary political elites.⁴⁹⁷

Fourth, the effectiveness of strategy execution has been impaired by significant time constraints. The process for implementing policy changes accelerated dramatically after Powell left office in January 2005. Even as the potential for nuclear cooperation between the United States and India increased with changing U.S. officials, however, the window for implementation under the Bush administration narrowed. The issue of timing negatively affected the deal in several ways: first, it is probable that the administration would have been likely to develop a broader and more inclusive strategy had time constraints not been as severe. This sort of approach might have generated a more expansive support base, which in turn would have facilitated the passage of the agreement through Congress. Second, time constraints also undoubtedly influenced the administration's communication with Congress. One example of this lies in the wording of the proposed legislation submitted to Congress following the March 2, 2006, Bush-Singh accord. Regarding the language, Weiss concluded that:

The presidential determinations were couched in the language of progress toward reaching goals, rather than in having reached the goals themselves. The administration's plan was to get the enabling legislation passed quickly so that it could be used as a lever to obtain NSG support for altering its own rules to allow nuclear trade with India.⁴⁹⁸

This "language of progress toward reaching goals" was an attempt to secure congressional support for the deal at an early stage, before rule-changes within the IAEA and NSG were made to accommodate India. However, congressional support might have been more effectively secured through increasingly transparent administrative processes. To enable timely legislative approval, the president's

497 In "India Nuclear Deal May Face Hard Sell," Kessler writes, "Only after the [Joint Statement] did the administration begin to brief members of Congress. One U.S. official involved in the negotiations said the failure to consult with Congress or to build support for the agreement within the bureaucracy has created lasting problems: 'The way they jammed it through is going to haunt us.'"

498 Weiss, 439.

proposal asked for “excessive latitude”⁴⁹⁹ in the eyes of Congress, which then responded by reverting to more traditional provisions requiring congressional approval of all agreements that did not meet AEA conditions. The administration’s plan sought to establish a formal U.S.-Indian nuclear agreement as an ordinary accord that met all the requirements of Section 123 of the AEA. In testimony before the House Committee on International Relations, Weiss called this a “prime example of Executive Branch distrust of congressional judgment and Congressional prerogatives under current law.”⁵⁰⁰ He further added:

The Administration wants this controversial nuclear agreement, the first in history with a non-signer of the NPT that possesses nuclear weapons, to be treated as if there is no controversy about it; and to allow 1/3+1 of the members present and voting in either house to prevent the agreement from being rejected.⁵⁰¹

These kind of comments fueled Congressional concerns, ultimately prompting Congress to propose the two-step Lantos compromise, which irrevocably disrupted the administration’s schedule for implementing the agreement.

In order to achieve policy transformation, the administration’s strategy excluded other elements of the U.S. government that were able to influence policy direction, but which also could have enabled the implementation process. This caused the U.S.-India nuclear agreement to progress initially (post-Rice’s appointment as Secretary of State) quickly down the path envisioned by the administration. It also led to terms that were ill defined and open to interpretation. Such conditions might allow for situations far beyond those which the U.S. government presumably intended (such as the proliferation of sensitive materials and technologies, or an undermining of the global nonproliferation regime). These provisions were contested

499 United States Congress, *Henry J. Hyde...Act 3*.

500 For transcript, see Leonard Weiss, “Testimony on the U.S.-India Nuclear Deal,” House International Relations Committee, Washington, 11 May 2006, 28 May 2008 <legacy.armscontrol.org/pdf/Testimony/weio51106.pdf>.

501 *Ibid.*, 4.

by Congress, which slowed the agreement's advance—perhaps to a critical degree.

2. Agency Coordination

Though the aforementioned leaks and other forms of internal opposition at times complicated White House efforts, agencies and departments generally have worked well together to implement the administration's *ad hoc* strategy. This is evidenced by the overall sea change in U.S. policy toward India, which required cooperation from numerous executive agencies. Incremental shifts in U.S. policies toward India occurred in the Commerce, Defense, Energy, and State Departments throughout 2002-2004. Following that period, the administration has largely relied on a relatively small group of individuals who shared the president's vision. These included officials in the Defense Department and National Security Council, but the majority were located within the State Department (the body largely responsible for negotiating nuclear cooperation with India).

However, prior to several key personnel and organizational shifts in 2005, notable interagency conflict and internal State Department disputes existed within the administration. Blackwill's 20-month tenure at the U.S. Embassy in India was certainly not without strife. Reportedly subjected to two "scathing" reviews by the State Department's Inspector General's (IG) office following complaints from his staff, Blackwill was dubbed "the most controversial diplomat in Indian memory," by *Time* in 2004.⁵⁰² One IG team allegedly found embassy staff to have "the lowest scores ever in terms of... morale in India's mission."⁵⁰³ The State Department denied recalling the controversial diplomat or forcing his resignation, but Blackwill left his post in 2003.⁵⁰⁴

This was not the only dispute within the State Department and the administration. The merger of the AC and NP bureaus and the

502 Massimo Calabresi, "Our (Irascible) Man in Iraq," *Time*, 28 Jun. 2004, 2 July 2008, available at <http://www.time.com/time/magazine/article/0,9171,994555-1,00.html>.

503 "Blackwill to Stay Despite Demand for His Recall."

504 See Amy Waldman, "U.S. Ambassador to India Resigning Post After 2 Years," *New York Times* 22 Apr. 2003: A7.

expansion of the VC office were partly prompted by tensions within and among agencies. From 2001–2005 serious policy disputes arose between Secretary Powell and both the Pentagon and the Office of the Vice President.⁵⁰⁵ During his time at Foggy Bottom, Bolton frequently sided with the Pentagon and allies in Cheney’s office in policy clashes with opponents inside the Department of State.⁵⁰⁶ Internal State Department divisions mirrored interagency rifts: the “more independent leadership” of John Wolf, who headed the NP bureau, had led to “occasional differences with Bolton.”⁵⁰⁷ According to Kessler, during much of 2003 and 2004:

[The AC and VC bureaus] began to encroach regularly on the [NP]’s responsibilities. Issues on which these [AC and VC] bureaus had not previously focused suddenly became of interest, and their views frequently diverged from those of the nonproliferation bureau. Bolton did not seek to ameliorate this situation; if anything he encouraged it. (Bolton had come to view the nonproliferation bureau as untrustworthy because it occasionally took issue with his views during internal debates).⁵⁰⁸

These disputes impaired the ability of each office to carry out its assignment. Reduced productivity, inefficacy, frequent complaints, and embarrassing incidents in which internal feuds were aired publicly prompted the IG’s office to conduct a review of each bureau.⁵⁰⁹ The IG’s 2004 report recommended internal reorganization, proposing the merger of the AC and NP bureaus as a possible course of action

505 See Glenn Kessler, “Administration Critics Chafe at State Dept. Shuffle,” *Washington Post* 21 Feb. 2006: A04.

506 Ibid.

507 Ibid.

508 Ibid.

509 Rust cites one example, which “occurred at the 2004 meeting of the preparatory committee for the 2005 nuclear Nonproliferation Treaty (NPT) review conference. No less than three assistant secretaries, an undersecretary, and one ambassador delivered U.S. statements, two of which were embarrassingly repetitive...sometimes, four different representatives from each of the bureaus and the undersecretary’s office would strive to represent the department at interagency nonproliferation meetings. Other governments and even U.S. agencies naturally wondered who was in charge as the assistant secretaries for the three bureaus vied for influence.”

and citing a “lack of clear lines of authorities” between the AC, NP, and VC bureaus.⁵¹⁰ In an article for the Arms Control Association, former Acting Deputy Director of the NP Bureau Dean Rust analyzed the bureau reshuffling.⁵¹¹ He noted that the blurring of authorities “had resulted from deliberate intrusion by the other two bureaus on the NP’s functions. This problem could have been clarified by the undersecretary or other high-level officials, had they chosen to do so.” Rust concluded that the merger was a serious mistake.⁵¹² Powell and Rice did not and the reorganization was executed after the appointment of Robert Joseph as under secretary of state for non-proliferation (partly due to the change in State Department leadership from Powell to Rice and the need to consult Congress on the structural revisions).

When the State Department concluded consultations on the merger with Congress, it decided to install the new Bureau of International Security and Nonproliferation despite the fact that a plan for implementation had not been articulated. Rust cites the consequences of this hasty decision: the “three newly created ISN offices had no employees...two other ISN offices formed from the merger... had no lines of authority,” and no professional opportunities were created for the “more than 200 employees affected by the merger.”⁵¹³ Indeed, newly appointed Undersecretary Joseph replaced senior-level leadership at the agency and in doing so, entrenched tensions within the bureau by largely appointing individuals that had served under the previous Undersecretary John Bolton (2001–2005).⁵¹⁴ Questioning

510 Cited in Rust, “Reorganization Run Amok.”

511 See Dean Rust, “Reorganization Run Amok: State Department’s WMD Effort Weakened,” *Arms Control Today*, Jun. 2006, 2 June 2008, available at http://www.armscontrol.org/act/2006_06/ReorgRunAmok.asp.

512 Rust, “Reorganization Run Amok.”

513 Rust, “Reorganization Run Amok.”

514 Wade Boese identifies the three acting deputy assistant secretaries of the new bureau offices as “Andrew Semmel for nonproliferation policies and negotiations; Frank Record for counter-proliferation; and Donald Mahley for threat reduction, export controls and negotiations.” The panel itself was overseen by Frederick Fleitz, a former senior advisor to John Bolton. See “State Department Announces Reorganization,” *Arms Control Today*, Oct. 2005, 2 May 2008, available at http://www.armscontrol.org/act/2005_10/OCT-SDReorg.asp.

the judgment of this action, Rust wondered: “Did Rice and Joseph also not realize how little trust the career staff would have in a panel composed largely of political appointees who owed their loyalty to Bolton, whose aversion toward employees who disagreed with him was well known [within the Department]?”⁵¹⁵

The resolution of this tension may be explained by the allegations of former employees, who claimed that “some State Department weapons experts from offices that had clashed with Bolton were denied senior positions in the reorganization, even though they had superior qualifications.”⁵¹⁶ *The Philadelphia Inquirer* later reported that one political appointee looked outside of the department to fill office jobs by circulating an email that listed “loyalty to Bush and Rice’s priorities as a qualification.”⁵¹⁷ Though later rescinded for reasons of protocol, the letter pointed to the politicized atmosphere within Foggy Bottom.

After the departmental reorganization, the appointment of Rice, and a corresponding reduction in internal department and interagency tension, the administration’s preferred policy towards nuclear cooperation with India advanced rapidly. In contrast, during President Bush’s first term when high-level consensus was lacking, the administration’s strategy proceeded at an incremental pace. Ironically, the speed of post-2005 strategy implementation was perhaps too fast in the end. While key proponents of the accord were able effectively to neutralize most opposition within the executive branch, they have been unable to win necessary congressional support. Thus, the overall assessment of interagency coordination in light of what it could have been is poor. William Potter of the Center for Non-Proliferation Studies roundly criticized the administration’s strategy even before the 2006 proposal was submitted to Congress stating:

The new policy appears to have been formulated without a comprehensive high-level review of its potential impact on nonproliferation, the significant engagement of many of the government’s most senior nonproliferation experts, or

515 Rust, “Reorganization Run Amok.”

516 See Strobel, “Career Weapons Experts Booted by Bush Team.”

517 Ibid.

a clear plan for achieving its implementation. Indeed, the policy shift bears all the signs of a top-down administrative directive specifically designed to circumvent the inter-agency review process and to minimize input from any remnants of the traditional “nonproliferation lobby.”⁵¹⁸

Similarly, George Perkovich of the Carnegie Endowment for International Peace wrote, “The lack of extended review and consultation within the U.S. executive branch and between the executive and the Congress and nongovernmental experts, and with foreign governments has created a circumstance whereby analysis is following rather than preceding policy.”⁵¹⁹ Implementation of the *ad hoc* strategy was not indicative of broad-based support for the agreement but was instead enabled by a lack of policy review, which afforded various departments more freedom to cooperate as they wished at senior levels to advance the U.S.-India nuclear agreement.

3. Variables that Affected Policy-Making

To further assess the U.S. approach to nuclear cooperation with India, it is useful to analyze specific categories of variables inherent to the U.S. national security apparatus. In terms of decision-making structures and processes, Congress produced a compromise decision that slowed the progress of the agreement as envisioned by the administration. Still, the Lantos compromise also provided a path for the agreement to proceed once it became evident that necessary support for the accord was absent in Congress. In light of the stalemate, then, the legislative arrangement actually advanced development of the nuclear deal with India.

Standing and assigned authorities and responsibilities for interagency bodies and for each agency were clear in most regards. The events leading up to the Joint Statement demonstrated clarity; for example, the progressive paring down of the Department of Commerce’s list of Indian entities facing severe trade restrictions allowed for growth in high-technology trade with India, while the HTCG focused on removing trade barriers. The Department of Defense’s DPG

518 Potter, 343–344.

519 Perkovich, “Faulty Promises” 2.

solidified U.S.-Indian collaboration in security matters, and led to the ten-year, NFDR agreement. The Department of Energy's "U.S.-India Energy Dialogue" addressed the possibility of civil nuclear cooperation. All of these actions decoupled trade with India from punitive sanctions, and prompted movement away from historic attitudes and policies. This in turn furthered the objective of nuclear commerce with the subcontinent.

Other authorities and responsibilities were less clear. The previous section detailed internal State Department divisions and the merger of AC and NP Bureaus after "unclear lines of authorities" between the offices were noted.⁵²⁰ However, the opacity of these lines was not necessarily attributable to the structure of the department, but to an increasingly politicized atmosphere within subunits and the department as a whole. The persistence of blurred authorities within DOS after the merger was not a leadership concern, however, as the dynamic appeared to mitigate resistance from offices (AC and NP) that were less inclined to accommodate nuclear concessions to India from their agendas.

Congressional oversight is an authority clearly assigned by the system of checks and balances constructed by the U.S. constitution. Nonetheless, at times, the administration presented itself as capable of overriding this function when Capitol Hill's actions were not well received by India. For example, the Presidential Signing Statement accompanying the Hyde Act may have left the impression that the finalized 123 Agreement need not meet all of the act's provisions. Yet, the Lantos compromise communicated that congressional approval of the future agreement was contingent upon precisely that.

Implementation of the administration's decision to pursue nuclear commerce with India was generally consigned to the State Department, as per the AEA. As the agency primarily responsible for negotiating the agreement, State could be called the "lead agency." The pace of policy implementation is a testament to this: under Secretary Powell, U.S.-Indian nuclear cooperation remained only a possibility but when Secretary Rice aligned the department with White House policy perspectives, State Department activities complemented

520 Rust, "Reorganization Run Amok."

the efforts of other executive other branch agencies and increased the pace of implementation. Throughout, strong agency bureaucracies resisted sharing information with and incorporating direction from outside bodies (especially Congress). Limited consultation proved a pattern for the administration, which notably failed to confer with Congress in its deliberations leading up to the 2005 Joint Statement and the 2006 Bush-Singh accord.

In terms of civilian national security organizational cultures, different agency and department cultures, including leadership styles and behavior, tended to reinforce competition among and within organizations. Among executive agencies, Powell's "renegade" State Department was known for its dissent within the administration, and Powell had a personal history of conflict with Vice President Cheney and Defense Secretary Rumsfeld. Within the State Department, Wolf's independent behavior drew Bolton's attention, and Bolton's leadership style may have helped foster a rivalry between the NP and AC/VC offices. Ambassador Blackwill reportedly had "direct access to President Bush [and was] said to frequently circumvent the State Department and deal directly with the White House on matters of importance, greatly irking the entrenched bureaucracy in Washington, D.C."⁵²¹, ⁵²² By developing and advancing strategy at the elite level, however, the administration managed to avoid the policy stagnation that typically accompanies interagency rivalries.

White House leadership held a demonstrable preference for unilateralism at times, which also characterized its dealings with India. This is what prompted Perkovich to admonish the administration for a "lack of extended review and consultation within the U.S executive branch and between the executive and the Congress."⁵²³ Weiss identified a predominant reason for the lack of communication between executive and legislative branches of government: the

521 "Blackwill to Stay Despite Demand for his Recall."

522 In "Our (Irascible) Man in Iraq," Massimo Calabresi writes that Blackwill was Rice's boss at the National Security Agency under the George H.W. Bush administration, and "in 2000, Rice brought Blackwill into the team of "Vulcans," who tutored President George W. Bush on foreign and national-security policy during the [first] campaign."

523 Perkovich, "Faulty Promises," 2.

administration's "distrust of Congressional judgment."⁵²⁴ The DOS reshuffling also manifested mistrust within departments as Rust observed that it was "not the first time that subcabinet-level political appointees have hijacked a reorganization to pursue their own agenda."⁵²⁵ A career State Departmental official who felt sidelined by the reorganization reflected on the events noting, "The suspicion is we would undermine the policy. That is what all of us find most offensive. We are here to serve any administration."⁵²⁶ In failing to engage Congress thoroughly, the administration reprioritized greater governmental unity in favor of speed. In response, Congress derailed the administration's implementation strategy with delay and by further distancing domestic and international processes.

4. Achievements and Costs of an Ad Hoc Strategy

The most significant achievement of the *ad hoc* strategy is that it has seen the agreement through up until this point, which is surely attributable to the strength of the administration's tenacity and vision. The agreement itself has been touted by the president and his staff as "one of their top foreign-policy accomplishments."⁵²⁷ The quick pace of policy implementation on both sides should be appreciated: India was able to reach a complicated IAEA safeguards agreement in a matter of months (for comparison, China and Pakistan both took years to accomplish the same). In two years and two days of negotiations, the administration resolved a number of deeply rooted issues, such as safeguards and reprocessing rights, which had been the cause for three decades of bitterness. Repeated travel between Washington and New Delhi forged a link between the two capitals and a friendly, professional rapport among U.S. and Indian counterparts will likely remain intact even if the deal falls through.

Yet, critical strategic flaws for policy implementation may result in the breakdown of the agreement. The unexpected resignation of Undersecretary of State Nicholas Burns in early 2008 was heralded

524 Weiss, "Testimony on the U.S.-India Nuclear Deal," 4.

525 Rust, "Reorganization Run Amok."

526 Kessler, "Administration Critics Chafe at State Dept. Shuffle."

527 Neil King, Jr., "Politics and Economics: Stalled U.S.-India Talks Imperil Business Opening," *Wall Street Journal* 20 Jul. 2008, Eastern ed.: A4.

by the *Wall Street Journal* as one of several “increasing signs that Washington’s strategies toward... India aren’t working.”⁵²⁸ The *Journal* also remarked that without Burns, the initiative “might ultimately falter.”⁵²⁹

Congressional approval of the 123 Agreement is not guaranteed even if India forges the necessary accords with the NSG and IAEA as the text of these documents could fail to meet other Hyde Act stipulations. In the event Congress rejects the agreement, other countries such as Germany, France, and Russia could move to fill the role the Bush administration had hoped to fulfill. A July 2008 *Washington Post* report cites an anonymous State Department official commenting on the possibility of the U.S. “not profiting from a deal it set in motion,” saying: “I don’t think there is anything to prevent [India] from doing that, if we don’t ratify [the agreement].”⁵³⁰ Another congressional critic, senior associate of the Carnegie Endowment for International Peace Sharon Squassoni, called the apparent legislative presumption that India needed the U.S. agreement a “fatal flaw in the logic of the U.S. Congress.”⁵³¹

Nevertheless, U.S. commercial interests are a powerful, even predominant, force in advocating the successful conclusion of the agreement as significant financial achievements and costs are tied to the fate of the deal. After heavily investing in congressional lobbying, the interested parties would obviously welcome the commercial opportunities that accompany the accord’s realization. The *Wall Street Journal* reports that India is likely to seek bids for new atomic reactors, and “industry executives estimate India’s nuclear-energy market will require \$100 billion of foreign direct investment in coming years.”⁵³²

528 Jay Solomon, “Politics and Economics: Burns’s Exit Complicates Nuclear Negotiations,” *Wall Street Journal* 19 Jan. 2008, Eastern ed.: A4.

529 Burns was retained by the State Department as a special envoy to see the policy initiative toward India through. See Sridhar Krishnaswami, “Burns to Quit, but Will Handle N-Deal,” *Rediff India Abroad* 18 Jan. 2008, 27 Jun. 2008, available at <http://www.rediff.com/news/2008/jan/18nddeal.htm>.

530 See Glenn Kessler, “Congress May Not Pass U.S.-India Nuclear Pact,” *Washington Post* 9 Jul. 2008: A10.

531 Ibid.

532 Peter Wonacott, “Politics and Economics: India Nuclear Pact May Create a Broad Opening for U.S. Firms,” *Wall Street Journal* 18 Nov. 2006, Eastern ed.: A4.

The broader aim, however, is not to simply pursue profitable deals with India, but to open up a rapidly expanding Indian economy to U.S. business by clearing “regulatory obstacles to investment and sales in India.”⁵³³ Close nuclear and defense ties will represent significant movement in that direction and offer many opportunities for capitalization.

Even as a proposal, the agreement has ushered in new U.S.-India commerce. For example, February saw leading U.S. aerospace manufacturer Lockheed Martin conclude a \$1 billion agreement with New Delhi for six military transport planes—the “first large order” India has placed with an American defense company.⁵³⁴ *Fortune* magazine notes that other American companies, like Boeing, Honeywell, and General Electric, are “actively chasing orders and tie-ups with Indian defense companies.”⁵³⁵ Defense Secretary Robert Gates’ latest visit to the subcontinent “pressed the case of American defense companies competing for multi-billion dollar contracts with the Indian government, including a coveted \$10 billion fighter jet deal.”⁵³⁶ However, *Fortune* also points out that while the door has been opened for American companies to occupy a defense-supply role that has been traditionally monopolized by Russia, there is no “history of trust” between the two countries. In this context, the U.S.-Indian nuclear cooperation agreement is poised to either advance or possibly scuttle the nascent commercial and political bilateral relationship.

In the event that the agreement enters into force, the accord will be viewed as a strategic success by some, and a blow to nonproliferation by others. The success of the agreement in meeting U.S. strategic aims without negatively affecting greater nonproliferation objectives may be a product of how other countries view the nuclear deal. If it is seen as truly India-specific and not as a vehicle for other nations to engage in similar cooperation with states that have problematic

533 Ibid.

534 John Elliott, “Riding the Elephant,” *Fortune* 6 Feb. 2008, 6 June 2008, available at <http://ridingtheelephant.blogs.fortune.cnn.com/2008/02/06/lockheed-leads-american-defense-companies-into-india/>.

535 Ibid.

536 Mark Mazzetti and Somini Sengupta, “U.S. and India to Strengthen Security Ties,” *New York Times [East Coast]* 29 Feb. 2008, late ed.: A12.

nonproliferation histories, such as Iran or Pakistan, it will not wholly damage the viability and value of the NPT regime's rule-based structure. However, a strategy that appears to be hastily assembled to allow what Weiss calls an, "unprincipled naked grab for lucrative trade and geopolitical advantage by the United States and other suppliers," is not one that will complement this view.⁵³⁷

Conclusion

The goal of this investigation is to provide insight for future instances, in which broader strategic ties and aims transcend traditional security concerns. The analysis has sought to illustrate the challenges of adjusting long-standing policies to suit new strategic frameworks. The study concludes that a strategy for lasting policy adjustment is best facilitated by an effective and well-rounded approach. The *ad hoc* strategy employed by the Bush administration to implement U.S.-Indian civil nuclear cooperation does not provide such a framework. Nonetheless, the movement toward solidifying a partnership between two once-estranged democracies is a positive development. The strategic gains that may emerge from this partnership are potentially great, and if civil nuclear cooperation is the lynchpin, the issue merits resolution. Time is rapidly running out on the possibility of ratifying the agreement under the tenure of the current administration, but regional and even global strategic benefits of the agreement should be readily identifiable to the next president.

537 Weiss, 453.

CHAPTER 5. MANAGING U.S.-CHINA CRISES

*Richard Weitz*⁵³⁸**Introduction**

This case study examines the formation and implementation of U.S. policies in response to three of the most important national security crises between the United States and the People's Republic of China (PRC).⁵³⁹ The first crisis, the June 1989 decision by the Chinese military to employ force to suppress unarmed student demonstrators in Tiananmen Square, shattered the dreams of many Americans that China would soon join Russia and other former communist countries as they transitioned towards political democracies. The second crisis, the accidental May 1999 bombing by U.S. aircraft of China's embassy in Belgrade during the Kosovo War, strained Sino-American relations further at a time when Chinese policy makers had become alarmed about increased U.S. military activities in Europe and East Asia. The final crisis, the April 2001 collision between an American EP-3 surveillance plane and a Chinese fighter aircraft off China's coast, underscored the dangers of accidents involving the two most powerful militaries in East Asia.

Three considerations make a study of how the United States has managed crises with China important for the Project on National Security Reform (PNSR). First, managing security relations with the PRC has been, and will probably remain for at least several more decades, one of the most important national security missions of the U.S. government. A crisis-prone relationship would increase the prospects of China's becoming a regional military rival of the United States—and possibly an actual adversary should a confrontation over Taiwan or another issue escalate into a full-blown military conflict. In contrast, good security ties between the United States and China—

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539 The author would like to thank Lauren Bateman, Christine Gilbert, Dylan Lehrke, Evan Minsberg, Elizabeth Zolotukhina, and many other colleagues who contributed insights to this chapter.

which among other features would see fewer and less severe Sino-American crises—would help advance the long-term U.S. objective of integrating Beijing into the existing international security system as a responsible stakeholder. In this regard, Sino-American cooperation could prove important for securing other U.S. national security goals: curbing the proliferation of weapons of mass destruction, countering genuine transnational terrorism and crime, promoting human rights and responsible government policies in Africa, and attaining a durable peace agreement on the Korean peninsula.

Second, assessing the U.S. interagency response to three short-term incidents sharing common characteristics provides examples of how the American national security system reacts to unexpected international crises. Analyzing how U.S. decision makers formulate and implement policies in these urgent situations helps identify patterns of organizational behavior within the American government's national security bureaucracy under acute time pressure. This evaluation complements other PNSR case studies that review how the U.S. government forms and executes strategies during longer lasting crises, such as those regarding Somalia and the former Yugoslavia in the 1990s, or towards the wars in Vietnam, Afghanistan, and Iraq.

Third, the three cases manifest various differences in U.S. policies towards China that clarify the formation and execution of U.S. national security strategy. Accordingly, examining three incidents allows for a richer assessment of how the U.S. national security apparatus responds to security crises with China than an investigation of any single event could provide.

In the aggregate, the three specific incidents under review encompass a wide range of actors that have participated in the formation and execution of U.S. security policies towards China. These include several executive branch departments, agencies of the U.S. intelligence community, influential members of Congress and their staff, and diverse non-governmental organizations. In addition, the lengthy time period under consideration—over a decade—allows for an analysis of the policy development and implementation processes of three separate presidential administrations. Each of these administrations employed distinct processes for formulating and executing American security policies towards China. Furthermore, the leading national

security policy makers in each of these administrations held sharply different views about the appropriate U.S. strategy toward China even if they subscribed to a general consensus that a more democratic, less bellicose PRC would be a more favorable partner than an authoritarian regime that pursued repressive domestic practices and confrontational foreign policies.

For example, despite the public outrage the Tiananmen Square massacre rightly evoked, the George H. W. Bush administration approached the issue of managing security relations with China largely from a realpolitik framework, emphasizing the need to prevent a rupture in Sino-American ties despite the end of the Soviet threat that had previously united the two countries during the Cold War. This strategy created intense problems for executive-legislative relations, as diverse members of Congress sought to challenge the administration's policies. The White House felt compelled to threaten presidential vetoes to prevent Congress from adopting sanctions that the executive branch strongly opposed. Yet, the Bush administration, like other foreign governments, proved unable to prevent the Chinese leadership from inflicting widespread human rights violations or induce Beijing to alter other policies obnoxious to American values and interests.

The 1999 Belgrade Bombing is an example of how intelligence failures and misperceptions escalated a genuine accident into an acute bilateral crisis. The priority of the William Clinton administration was to settle the dispute in a way that quickly returned the Sino-American relationship to pre-crisis conditions and allowed the U.S. government to continue to concentrate on winning the war in Kosovo. Constraints on the president's time, congressional attacks on the Chinese government, and other impediments complicated the U.S. government's ability to handle this crisis.

The 2001 EP-3 surveillance plane crash was also an accident, but it involved a deliberate intelligence-gathering operation along the Chinese coast, which Beijing considered provocative. In addition, the collision occurred at a time when many White House advisors considered China an emerging strategic rival of the United States. The George W. Bush administration sought to settle the EP-3 crisis through a solution that, while not worsening Sino-American ties, would not have compromised future U.S. intelligence operations

against China. In this case, differences in interagency perspectives, especially between U.S. civilian and military actors, made policy implementation more difficult.

This chapter begins by providing important background information regarding each crisis. The focus of each segment is on those factors—international, domestic, and within the executive branch agencies—that affected the formation and implementation of U.S. policies during the incident. The conclusion then reviews the four key questions of most concern to PNSR: (1) did the U.S. Government generally act in an ad hoc manner or did it develop effective strategies to integrate its national security resources?; (2) how well did the agencies and departments work together to implement these ad hoc or integrated strategies?; (3) what variables explain the strengths and weaknesses of the response?; and (4) what diplomatic, financial, and other achievements and costs resulted from these successes and failures?

Although the answers to these questions often differ for each of the three crises examined in this study, some patterns emerge. First, even those presidents that came to office with well-integrated strategies often found it hard to implement them within the U.S. interagency framework. Second, absent close presidential attention, the agencies would often develop and pursue their own China policies, contributing to undesirable policy incoherence. Third, responding to the immediate crisis almost always involved a mixture of formal and ad hoc interagency processes. Fourth, serious problems arose when the crisis occurred early in a presidential transition since the new team had yet to establish fully functioning interagency processes or secure Senate approval of many mid-level political appointees. Fifth, since the Tiananmen crackdown, sustained tensions have affected executive-legislative policies regarding China, with members of Congress often advocating much more confrontational policies than the executive branch deemed wise. Finally, the main achievement of the U.S. government response to all the crises involved costs avoided—normally not a major accomplishment, but important here, when mismanaging events could have escalated into nuclear war.

Crisis I: Tiananmen Square

U.S. policy toward China during the first Bush administration was directed by the president himself. George H.W. Bush was much more interested in foreign than domestic policy when he became president in January 1989. In addition, Bush felt comfortable dominating U.S. government decision making regarding Beijing given his extensive public policy background and experience with China. Before the establishment of an official U.S. embassy, Bush ran the U.S. Liaison Office in Beijing from 1974–1975. He subsequently served as director of the Central Intelligence Agency (CIA), U.S. Ambassador to the United Nations, and then as Vice President in 1981. Throughout his government career, a period that saw extensive Sino-American strategic cooperation against the Soviet Union, including joint support to the insurgents in Afghanistan then fighting Soviet occupation forces, Bush established close ties with many Chinese leaders. Alluding to Bush's predominant influence over U.S. China policy during his presidency, former Secretary of State James Baker later said that, "In the case of China policy, however, it's fair to say that very few policy initiatives were generated either by State or the National Security Council staff during my tenure. There was no real need."⁵⁴⁰

Under the president's direction, the first Bush team assumed office with a well-formulated strategy toward China. Its underlying premise was that China would continue to evolve from a hard-core communist regime into a more moderate authoritarian political system. In addition, Bush administration policy makers expected China to become more economically and perhaps politically integrated into existing international institutions. Ideally, this anticipated domestic and international mellowing would improve the socioeconomic conditions of the Chinese people at home while enhancing mutually beneficial international cooperation between Washington and Beijing in areas of common interest. Since they believed that direct U.S. government pressure to accelerate these benign trends could prove counterproductive, the Bush team agreed to temper aspirations for

540 Cited in David M. Lampton, *Same Bed, Different Dreams: Managing U.S.-China relations, 1989-2000* (Berkeley: University of California Press, 2001), 317.

near-term gains in the areas of human rights and democracy promotion in the hopes of achieving enduring gains in these spheres later.⁵⁴¹

The main obstacle to implementing such a strategy was the desire among many Americans to extend the democratic wave that was sweeping through Eastern Europe and the Soviet Union to encompass China as well. In terms of the development and implementation of U.S. national security policy, this difference manifested itself most clearly in executive-legislative tensions over America's China policy.

During the 1980s, leading members of Congress generally shared the Reagan administration's view of China as a useful geopolitical ally against Soviet expansionism. They therefore deferred to presidential leadership on China. The collapse of the Soviet bloc during the early 1990s, combined with evidence that China would remain a repressive authoritarian regime, resulted in a diverse range of members assuming a more critical approach. This anti-Beijing coalition included liberals concerned about human rights, conservatives harboring anti-communist and pro-Taiwan values, and less ideologically committed members critical of the Chinese government's unfair commercial practices, support for repressive regimes abroad, involvement in the proliferation of weapons of mass destruction, conduct of espionage operations within the United States, and pursuit of other policies obnoxious to American values and interests. These congressional-presidential differences over China first became prominent during the Tiananmen crisis. They have affected U.S. national security policies toward China ever since.

Immediate Crisis Response

Since Mao Zedong died in September 1976, China has experienced a complex transition from an autarkic totalitarian state to a country characterized by an uneasy mixture of an authoritarian political regime and a state capitalist economic system that combines many free market practices at home with a national economy open to foreign trade and investment. In the context of this intricate and incomplete

541 Robert G. Sutter, *U.S. Policy Toward China: An Introduction to the Role of Interest Groups*, (Lanham: Rowman & Littlefield, 1998), 27–28.

transformation, it is unsurprising that China has experienced periodic domestic political crises such as those in 1979, 1986, and, most extensively, in 1989.

In early April of that year, the natural death of popular political reformer Hu Yaobang provided an occasion for discontented students to conduct mass protest rallies at which they denounced various policies of the government and the ruling Chinese Communist Party. Despite official warnings to cease such activities, and attempts at dialogue between party and student leaders, the number of student protesters soared in the following weeks. Intellectuals, workers, and other dissatisfied members of Chinese society joined the demonstrations. Many of the protesters called for greater democracy, but demands for more jobs, an end to corruption, and other issues were also common. By May 18, the crowd in Tiananmen Square alone had grown to approximately 1 million people.

On May 19, the Chinese government imposed martial law and ordered the Chinese armed forces, the People's Liberation Army (PLA), to disperse the protesters and restore order in Beijing and other Chinese cities. Due to inter-party divisions, lack of appropriate coordination, and an underestimation of the level of support for the student movement, the PLA units declined to use force against the protesters. By June 3, however, hardliners within the Chinese leadership had secured control of the party and government. They ordered the reinforced PLA units to suppress the protesters, whose numbers had dwindled to a few thousand hard-core activists, with force. The resulting military operation, which began on late June 4 and lasted several days, killed hundreds, perhaps thousands, of students and other civilians in Beijing alone, with many more injured or arrested.

The unprecedented nature of the events in China caught U.S. political leaders as well as career diplomats and intelligence analysts by surprise.⁵⁴² In addition, the Bush administration had yet to fully staff its national security team for Asia. When the crisis erupted, the U.S.

542 See for example the uncertainty about China's political situation in 1989 recorded in Michael L. Evans, "New Documents Reveal U.S. Perceptions of 1989 Chinese Political Crisis," June 4, 2001, available at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB47>.

government lacked an assistant secretary of state for Asian affairs, an assistant secretary of defense for international security affairs, and a national intelligence officer for East Asia on the National Intelligence Council. The U.S. Ambassador to Beijing, James Lilley, only arrived in Beijing on May 3.⁵⁴³

When Bush assumed office, the initial focus of his limited China team was on organizing a U.S. presidential trip to the country. The visit, which occurred February 25–27, aimed to renew ties and counter the growing overtures of Soviet leader Mikhail Gorbachev for a Sino-Soviet strategic rapprochement. Senior administration officials generally downplayed the growing public disorders in China.⁵⁴⁴ It was not until the international media arrived in China to cover Gorbachev's visit, which occurred on May 17, that the full extent of the Chinese upheavals became apparent in Washington. Only then did the State Department organize a round-the-clock special Tiananmen task force with a direct telephone link to the U.S. embassy team in Beijing.⁵⁴⁵ Immediately after the Chinese military began its crackdown in Tiananmen, U.S. officials struggled to understand what was happening. At this time, Washington's main sources of intelligence were cables originating from the American embassy in Beijing. Although the State Department's special task force sought to collect, integrate, and disseminate the cables and other information regarding China in a structured manner, many of the diverse reports coming in soon proved inaccurate.⁵⁴⁶

In the first public statements of an administration official on the escalating crisis, Acting Deputy Assistant Secretary of State for East Asian and Pacific Affairs Richard Williams simply expressed the hope

543 Robert L. Suettinger, *Beyond Tiananmen: The Politics of U.S.-China Relations, 1989-2000* (Washington, D.C.: Brookings Institution, 2003), 63.

544 Patrick Tyler, *A Great Wall: Six Presidents and China* (New York: Century Foundation, 1999), 343–350.

545 Suettinger, *Beyond Tiananmen*, 64.

546 "Cable, From: Department of State, Wash DC, To: U.S. Embassy Beijing, and All Diplomatic and Consular Posts, TFCHO1: SITREP 1, 1700 EDT (June 3, 1989)," in Jeffrey T. Richelson and Michael L. Evans, eds., *National Security Archive Electronic Briefing, "Tiananmen Square 1989: The Declassified History,"* <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB16/documents/12-01.htm>.

that “the trends towards more openness and more respect for basic human rights will continue.”⁵⁴⁷ In private, however, Secretary Baker, who feared encouraging a mass rebellion that the United States could not formally support, advocated caution.⁵⁴⁸ On May 20, in his first public comments regarding the disorders in China, Bush expressed support for greater freedom and democracy in China, but urged both sides to exercise restraint because “I do not want to see bloodshed.”⁵⁴⁹

When the Tiananmen crackdown began on June 4, President Bush reaffirmed his pre-crisis message about the need for mutual restraint: “I deeply deplore the decision to use force against peaceful demonstrators and the consequent loss of life. We have been urging and continue to urge non-violence, restraint, and dialogue. Tragically, another course has been chosen. Again, I urge a return to non-violent means for dealing with the current situation.”⁵⁵⁰ Secretary Baker tempered his public comments even further. He told CNN that “it would appear that there may be some violence being used here on both sides” and that the administration would deliberate and assess these “deplorable” events before deciding whether to impose sanctions: “Let’s see what happens over the course of the next few days before we start hypothesizing about what we might or might not do in the future.”⁵⁵¹

Some members of Congress had begun castigating the Chinese government and the Bush administration’s approach even before the PLA crackdown. After Tiananmen, the congressional, media, and public outcry increased exponentially. Bush responded to these

547 Cited in Harry Harding, *A Fragile Relationship—the United States and China since 1972* (Washington: Brookings Institution, 1992), 225.

548 Cited in Harding, *Fragile Relationship*, 225.

549 Bernard Weinraub, “Upheaval In China,” *New York Times*, May 22, 1989, available at

<http://query.nytimes.com/gst/fullpage.html?res=950DE7D61438F931A15756C0A96F948260>.

550 Cited in “Demonstrations in China—Department of State Statements, George Bush Addresses,”

available at http://findarticles.com/p/articles/mi_m1079/is_n2149_v89/ai_7938857.

551 Cited in Robert Pear, “Crackdown In Beijing; President Assails Shootings In China,” *New York Times*, June 4, 1989, available at <http://query.nytimes.com/gst/fullpage.html?res=950DE0D61E3DF937A35755C0A96F948260>.

growing criticisms by announcing a package of limited sanctions on China. The measures included suspending military contracts and defense technology transfers worth approximately \$600 million as well as indefinitely freezing all visits between U.S. and Chinese military leaders. These steps had been recommended by an American emergency session earlier that day of the interagency working group established to manage the crisis. Under the chairmanship of Acting Assistant Secretary of State for East Asian and Pacific Affairs William Clark, its participants consisted of senior representatives from the intelligence community as well as policy and legal experts from various executive branch departments. The Department of Defense representative, with the approval of Secretary of Defense Richard Cheney and Undersecretary Paul Wolfowitz, recommended that, since the PLA was responsible for the massacre, U.S. sanctions should focus on curtailing military relations between China and the United States.⁵⁵²

In a precursor of impending problems, however, Bush made clear that, given his belief that he possessed superior understanding of the issue, Congress and others should allow him to manage China policy: “I’m the president; I set the foreign policy objectives and actions taken by the executive branch. I think they know, most of them in Congress, that I have not only a keen personal interest in China, but that I understand it reasonably well.”⁵⁵³ Bush also refused to break relations with the PRC or recall Ambassador Lilley to Washington for consultations, a common move when one government wishes to signal its displeasure with the behavior of another regime.⁵⁵⁴

When the congressional and public denunciations of the administration’s policies towards China continued, the White House announced additional unilateral sanctions on June 20. These included suspending participation in all high-level exchanges of government officials with the PRC as well as instructing American representatives at various international financial institutions to postpone considering

552 Suettinger, *Beyond Tiananmen*, 66–67.

553 “George Bush, The President’s News Conference, June 5th, 1989,” The American Presidency Project, available at <http://www.presidency.ucsb.edu/ws/print.php?pid=17103>.

554 Patrick Tyler, *A Great Wall: Six Presidents and China* (New York: Century Foundation, 1999), 359.

new loans to China.⁵⁵⁵ In some cases, the president adopted harsher measures than recommended by the interagency group that met within the Policy Coordinating Committee (PCC) established to address the China crisis. For example, he chose to postpone a planned trip by Secretary of Commerce Robert Mossbacher to China even though the PCC had not supported this action.⁵⁵⁶ Yet, the president refused to impose the even more severe sanctions advocated by members of Congress, the media, and various human rights and other nongovernmental organizations.⁵⁵⁷ In justification, Bush continued to argue that responding too harshly would produce a breakdown in bilateral relations that would harm the Chinese people.⁵⁵⁸

Presidential Envoys and Personal Diplomacy

To complement his public actions, President Bush sought to reestablish direct personal contact with the Chinese leadership. After encountering difficulties attempting to work through various Chinese intermediaries, Bush proposed, and the Chinese accepted, holding a secret diplomatic meeting in Beijing. Bush decided to send National Security Advisor Brent Scowcroft and, at Baker's urging, Undersecretary of State Lawrence Eagleburger on this mission even as Congress was codifying the presidential directive against senior-level diplomatic exchanges with the PRC.⁵⁵⁹ Scowcroft and Eagleburger arrived in Beijing on June 30, carrying a set of guidelines that contained such passages as:

- “President Bush recognizes the value of the PRC-US relationship to the vital interests of both countries. Beyond that, he has a deep personal desire to see the friendship between the Chinese and American people maintained and strengthened. This commitment derives from his experience

555 Sutter, *U.S. Policy Toward China*, 29.

556 Jean A. Garrison, *Making China Policy: From Nixon to G.W. Bush* (London: Lynn Rienr Publishers, 2005), 118.

557 Ka Zeng, *Trade Threats, Trade Wars: Bargaining, Retaliation, and American Coercive Diplomacy* (Ann Arbor: University of Michigan Press, 2004), 103.

558 Harding, *Fragile Relationship*, 227.

559 James A. Baker III, *The Politics of Diplomacy: Revolution, War and Peace, 1989-92* (New York: G. P. Putnam's Sons, 1995), 109.

in China and his personal friendship for so many of China's leaders.

- “At the same time, as leader of the nation he must represent and articulate the values of the American people – values he deeply believes in personally as well.”
- “The American people have been shocked and repelled by much of what they have seen and read about recent events in China. That is as much a fact as Chinese views of U.S. reactions to those events. Both governments must take those attitudes into account.”
- “President Bush shares the views of the broad mass of the American people regarding those events. He also realizes, however, that the long-term relationship between the PRC and the U.S. is, as already indicated, an important factor for both countries. He wants to manage short-term events in a way that will best assure a healthy relationship over time. But he is not the only factor in the American democratic system. The Congress is a co-equal branch of the government; its attitudes are also important in determining how the U.S. reacts to external events.”
- “Congressional reaction to what has occurred in the PRC has been strong; inevitably that reaction has led to numerous demands for legislation to end many aspects of our economic, military, and political relationship. The President has taken the steps he has believed appropriate in current circumstances, while resisting demands by the Congress and segments of the American public for other measures.”
- “The degree to which the President is able to maintain his current prudent course will depend, in large measure, on how events develop over the coming days in the PRC. Further arrests and executions will inevitably lead to greater demands in the U.S. to respond. Efforts at national reconciliation, on the other hand, will find a cooperative U.S. response.”⁵⁶⁰

560 “Tiananmen Square 1989: The Declassified History,” Document 34, available at http://china.usc.edu/App_Images//tiananmensquare_doc_33.pdf

In other words, Bush would do what he could to resist congressional pressure for harsher sanctions because of the importance of the U.S.-China strategic relationship, but the Chinese government needed to avoid additional domestic acts of repression that could force his hand by further aggravating American sensibilities. The trip achieved few immediate accomplishments as neither side fully understood the domestic situations of the other, but the exchange may have helped prevent a further deterioration in the relationship between the two governments by at least signaling U.S. presidential intent to maintain a high-level dialogue.

Worsening Executive-Congressional Tensions

Throughout the remainder of 1989, President Bush and his closest advisors attempted to use carrots and sticks to induce the Chinese authorities into taking actions that would improve Sino-American ties. The administration loosened its original sanctions in July 1989, when it permitted Boeing to sell China four commercial jets equipped with navigation systems whose technologies had potential military as well as civilian uses.⁵⁶¹ Congress, the media, and human rights groups criticized the Bush administration for relaxing the sanctions without securing prior improvements in China's human rights policies (public executions and other repressive measures continued unabated). Denunciations increased when, after the administration announced that Scowcroft would lead a U.S. delegation to China on December 9–10, the media learned of Scowcroft's earlier secret trip to Beijing in July, a time when Bush had publicly suspended high-level diplomatic exchanges. Senate Majority Leader George Mitchell echoed many of his colleagues in criticizing Bush's "embarrassing kowtowing" before China's government.⁵⁶²

Ideological alignments, which in this case often overcame partisan affiliations, reinforced the congressional-executive branch dispute over institutional prerogatives. Right-wing anti-communists joined with liberal human rights activists to denounce the administration's

561 Garrison, *Making China Policy*, 113.

562 George J. Church, "Bush: The Riverboat Gambler," *Time*, December 25, 1989, available at <http://www.time.com/time/magazine/article/0,9171,959405,00.html>.

realpolitik approach. Conservative Republican Senator Jesse Helms and liberal Democratic Representative Stephen Solarz agreed on a television news show that Washington needed to act more forcefully, with Solarz warning that, “if the president doesn’t take the initiative, the Congress will do it for him.”⁵⁶³ Within the administration, the realist perspective—shared by Scowcroft, Eagleburger, and the other senior officials who had worked with former Secretary of State Henry Kissinger—tended to focus on China’s external behavior rather than its government’s domestic policies, presuming that the latter were largely unchangeable by direct U.S. action and at best only susceptible to long-term evolution.⁵⁶⁴ Only Secretary Baker began to urge Bush to adopt a firmer stance in public that accorded more with popular and congressional sentiments.⁵⁶⁵

Nevertheless, Bush continued his moderate approach through the end of the year. For example, he exercised the discretion granted him in congressional legislation to waive sanctions preventing Chinese space vehicles from launching three U.S.-built communications satellites or to permit new Export-Import Bank loans for projects in China.⁵⁶⁶ The president also worked vigorously to prevent enactment of the Emergency Chinese Immigration Relief Act, a popular measure proposed by Democratic Representative Nancy Pelosi, and backed by many Republicans, which would have allowed Chinese students in the United States, some of whom had participated in pro-democracy activities while in residence, to remain beyond the terms of their original visas rather than return to the repressive conditions in China. The Beijing government threatened to end further academic exchanges if the act were adopted.⁵⁶⁷ Bush justified his veto of the act, which was overridden in the House but not the Senate, on constitutional and pragmatic grounds. He argued that the bill would have unnecessarily tied his hands in foreign policy and damaged Sino-

563 Cited in Harding, *Fragile Relationship*, 230.

564 David Skidmore and William Gates, “After Tiananmen: The Struggle over U.S. Policy toward China in the Bush Administration,” *Presidential Studies Quarterly*, vol. 27, no. 3 (Summer 1997), 517–518.

565 Suettinger, *Beyond Tiananmen*, 368.

566 Sutter, *U.S. Policy Toward China*, 31.

567 Jian Yang, *Congress and US China Policy, 1989-1999* (New York: Nova Science Publishers, 2000), 78.

American relations.⁵⁶⁸ In other cases, congressional leaders agreed to revise various bills, including implementing language that gave the president the authority to waive sanctions on national interest grounds, in order to secure White House approval.⁵⁶⁹

Administration Policy Reassessment

By January 1990, it had become clear that President Bush's approach to China was not producing the hoped-for moderation in the severity of Chinese repression, which would have relaxed the pressure on Bush from Congress and others to adopt more confrontational policies towards Beijing. Due to the continuing persecution of students, dissidents, and others, which included public executions as well as lengthy prison sentences under horrid conditions, Bush found it difficult to balance dealing with Beijing and Capitol Hill. In the early months of 1990, Congress, the media, and various human rights groups sought to exploit Congress's ability to block or condition renewal of the annual presidential waiver allowing "non-market economies" like China to enjoy Most Favored Nation (MFN) status (later more appropriately termed Normal Trade Relations, or NTR) with the United States. Without the waiver, Chinese exports to the United States could have been subject to hefty tariffs.

The Bush legislative team defeated these congressional efforts to deny or renew conditionally China's MFN trading status by arguing that such measures would prove counterproductive to achieving U.S. human rights goals in China. They also mobilized American businesses that would have suffered economically from the loss of trade.⁵⁷⁰ At the same time, the administration indicated to the Chinese that they could not forever defend China if Beijing did not take steps to improve relations by easing political repression. The Chinese authorities made certain efforts in this direction, releasing some political prisoners as well as allowing prominent Chinese dissident Fang Lizhi, who had been granted shelter in the U.S. Embassy, to

568 Garrison, *Making China Policy*, 119–120.

569 Harding, *Fragile Relationship*, 234.

570 Robert Lee Suettinger, "The United States and China: Tough Engagement," Richard N. Haass and Meghan L. O'Sullivan, eds., *Incentives, Sanctions, and Foreign Policy* (Washington, D.C.: Brookings Institution Press, 2000), 15.

leave the country. But these modest steps failed to satisfy Beijing's numerous critics in Congress.

When Saddam Hussein invaded Kuwait in early August 1990, the Bush administration suspended its efforts to pressure China to make further domestic reforms since Washington needed Beijing's support in the U.N. Security Council (UNSC)—first to authorize the increasingly severe sanctions against Iraq, later to secure a UNSC resolution permitting the use of force under Operations Desert Shield and Desert Storm. The Chinese government dutifully did not veto these resolutions, which enhanced support for the resulting U.S. military operations both internationally and within Congress. In compensation for their benign neutrality during the Persian Gulf War, senior Chinese representatives received several high-profile meetings with U.S. officials in New York and Washington. Other governments also began relaxing their post-Tiananmen sanctions on China at this time. A common concern was that retaining the embargoes longer than their commercial rivals could prove economically costly by placing them at a competitive disadvantage.⁵⁷¹

Upon the successful conclusion of the Iraq campaign, however, the Sino-American relationship regressed. The two governments engaged in contentious disputes regarding the Beijing's human rights policies, its export of missile and nuclear energy technologies to countries of proliferation concern, and its lax protection of American intellectual properties. Although Bush used his veto power to prevent additional sanctions favored by Congress, his decision during the 1992 reelection campaign to authorize Taiwan to purchase 150 American-manufactured F-16s, a move that the Chinese government as well as some American analysts considered a violation of the 1982 Sino-American communiqué limiting U.S. arms sales to "defensive" weapons systems, added yet another irritant to the U.S.-China relationship.⁵⁷²

571 Yitzhak Shichor, "Decisionmaking in Triplicate: China and the Three Iraqi Wars," in Andrew Scobell and Larry Wortzel, eds., *Chinese National Security Decisionmaking Under Stress* (Carlisle, PA: Strategic Studies Institute of the U.S. Army War College, 2005), 205.

572 James Mann, *About Face: A History of America's Curious Relationship with China from Nixon to Clinton*, 254–273.

Crisis II: Belgrade Embassy Bombing

During the 1992 presidential election campaign, William Clinton charged George Bush with pursuing an excessively soft approach toward China.⁵⁷³ Once in office, however, President Clinton adopted a similar long-range strategy toward Beijing. Commonly referred to as “constructive engagement” under Clinton, the strategy aimed to promote China’s domestic liberalization, global economic integration, and responsible international behavior gradually by deepening bilateral dialogue and interaction on a range of issues.⁵⁷⁴ After Tiananmen, few Americans in either the Bush or Clinton administrations expected China to evolve soon into a Western-style democracy (though Clinton officials repeatedly expressed a hope to see a long-term liberal evolution of the Chinese political system in line with its general philosophy of “enlargement and engagement”). In addition, with the disappearance of the mutual Soviet threat, both administrations feared that Beijing and Washington might become strategic rivals if the bilateral relationship was poorly managed.

Unlike President George H.W. Bush, however, Clinton did not dominate America’s China policy during his first term. Clinton’s initially low-level involvement regarding China-related issues decreased coherence in both the formation and the implementation of U.S. policies because the various executive branch agencies enjoyed greater freedom to promote their own priorities toward China. A related problem was that none of the president’s leading foreign policy advisors or department heads had much experience with China. This situation, combined with the absence of the complex interagency processes associated with policy toward Russia and other higher-priority issues, allowed mid-level officials most concerned with promoting agency agendas to dominate policy making and implementation with respect to PRC-related issues.⁵⁷⁵

573 Ezra F. Vogel, “Introduction: How Can the United States and China Pursue Common Interests and Manage Differences?” in Ezra F. Vogel, ed., *Living with China: U.S./China Relations in the Twenty-First Century* (New York: W. W. Norton, 1997), 24.

574 Suettinger, “The United States and China,” 17-20; and Tyler, *A Great Wall*, 393–412.

575 Michael Nacht, “Domestic Roots of U.S. China Policy (with Thoughts on Japan) from Clinton Through 2001,” in Ezra F. Vogel, ed., *The Age of Uncertainty*:

In terms of U.S. government agency priorities, the Department of Commerce focused on expanding opportunities for American businesses to invest in China's growing economy. The Office of the U.S. Trade Representative sought to employ threats of economic sanctions to induce the Chinese government to improve its commercial practices, such as by expanding market access for U.S. exporters and by more effectively respecting American intellectual property rights. The Department of Defense attempted to restore the direct dialogue with the Chinese military that had been severed after Tiananmen. Finally, the U.S. State Department was internally fractured, a recurring condition that has appeared to undermine its influence within U.S. policy making in general. In the case of China policy under Clinton, the State Department bureaus responsible for human rights lobbied the Chinese government to temper its oppressive domestic practices while the office in charge of nonproliferation sought to pressure Beijing to curb its sale of advanced technologies related to ballistic missiles and potential weapons of mass destruction. The Bureau of East Asian and Pacific Affairs, whose China desk contained the department's main area expertise, found it difficult to impose its own policy preferences on the above-mentioned functional offices despite its being headed by an experienced China specialist, Winston Lord.⁵⁷⁶

Although Clinton expanded the formal membership of the National Security Council (NSC) early in his first term by including the U.S. permanent representative to the UN and certain high-ranking American economic policy makers, he rarely convened formal meetings of the council. Instead, national security decision making under Clinton, as with the two Bush administrations, took place in a formal three-tiered decision making system. A Principals Committee, chaired by the national security advisor and consisting of the heads of the major U.S. executive departments involved in foreign policy as well as the leading advisors having national security portfolios, headed

The U.S.-China-Japan Triangle from Tiananmen (1989) to 9/11 (2001) (Cambridge, Massachusetts: Harvard University Asia Center, 2004), 44–46.

576 Kenneth Lieberthal, "Domestic Forces and Sino-U.S. Relations," in Ezra F. Vogel, ed., *Living with China: U.S./China Relations in the Twenty-First Century* (New York: W. W. Norton, 1997), 263–264.

this hierarchy. A Deputies Committee, consisting of the second-ranking officials in each of these agencies and chaired by the deputy national security advisor, resolved some policy decisions while elevating the most important questions to the Principals Committee for action. Interagency Working Groups (IWGs) operated one level below. Equivalent to the Policy Coordinating Committees of the first Bush administration, the IWGs consisted of the office heads, analysts, NSC directors, and other mid-level officials who had a major responsibility for the issue of concern to the IWG. Informal channels—such as weekly meetings among key department heads and presidential advisors—arose to complement and accelerate this formal committee structure.⁵⁷⁷

One problem with this interagency process for China policy was that President Clinton rarely engaged on China-related issues during his first term. His nonintervention deprived the NSC staff of the perceived presidential imprimatur typically required to enforce a coherent strategy on the many U.S. government agencies that had developed some stake in any important American policy toward China. The resulting inconsistencies may have confused Chinese officials, who in any case were suspicious of the president's ardent support for democracy promotion in former communist countries. For example, the initial focus of the Clinton administration was on resolving Sino-American commercial tensions and promoting human rights in China, both issues of great concern to Congress. As during the first Bush administration after Tiananmen, members of Congress sought to use trade issues as a carrot and stick to shape Beijing's domestic policies as well as those of the U.S. executive branch toward China. Despite issuing a May 1993 executive order conditioning the renewal of China's MFN trading status on its government's making progress in human rights, Clinton eventually extended MFN unconditionally primarily due to overwhelming pressure from the American business community, and their advocates in a cross-pressured Congress, against the policy of linking trade and human rights.⁵⁷⁸ It was not until after his reelection that Clinton made China policy a priority. The decision empowered his second-term National

577 Suettinger, *Beyond Tiananmen*, 157–158.

578 Zeng, *Trade Threats*, 106–109

Security Advisor Sandy Berger to establish firm White House control over the interagency groups and processes related to China.⁵⁷⁹

Another problem for the coherent conduct of China policy was that U.S. policy makers could not establish clear metrics for determining whether the Chinese government had made “substantial progress” in meeting the administration’s demand for human rights improvements. The Chinese authorities, for instance, would release some prisoners and prominent dissidents, particularly when Congress was preparing to vote on issues of concern to Beijing, but then arrest others. The administration attempted to circumvent the difficulties of measuring the effectiveness of China’s human rights policies by focusing on achieving more concrete objectives in other policy areas. These goals included securing greater protection for American intellectual property in China and preventing Beijing from selling missile and WMD-related technologies to countries of proliferation concern like Iraq and Iran.⁵⁸⁰

Even in these other areas, the limited ability of the U.S. intelligence community to assess Chinese behavior created problems for U.S. policy makers. The intelligence difficulties evident during all three U.S.-China crises reviewed in this chapter also affected Sino-American relations on other occasions during the 1989–2001 period. In July 1993, for instance, the CIA erroneously concluded that the *Yin He* (“Galaxy”), a Chinese container ship, was transporting two banned chemicals (thiodiglycol and thionyl chloride) to Iran, where they would supposedly be used in Tehran’s chemical weapons program. Despite denials by the most senior Chinese officials, U.S. warships and military aircraft ostentatiously monitored the ship, which then sought but failed to gain entry to a number of ports in the Persian Gulf. After three weeks, the Chinese authorities consented to allow Saudi inspectors, advised by U.S. technical experts, to examine the vessel. The inspectors found the ship carried legitimate cargo and let it proceed to its original destination. The Chinese government issued a formal statement accusing the U.S. military of violating international law.⁵⁸¹ The incident weakened policy makers’ confidence in the

579 Suettinger, *Beyond Tiananmen*, 283–284, 305.

580 Suettinger, “The United States and China,” 22–23.

581 “Statement by the Ministry of Foreign Affairs of the People’s Republic of

intelligence community's assessments regarding China's suspected proliferation activities for several years.⁵⁸² It may also have led some Chinese to conclude, since the CIA selected the target, that the 1999 bombing of their embassy (which reportedly killed several Chinese intelligence operatives) was part of a deliberate effort on the part of the U.S. intelligence community to weaken China.

The Clinton administration supplemented its robust commercial and confrontational proliferation approach toward the PRC with an attempt to restore a direct dialogue with the Chinese defense community. The Chinese armed forces were seen as an important domestic actor as well as a growing operational concern for the U.S. military. The PLA's increasing capabilities and deployments led many U.S. national security policy makers and nongovernmental experts to call for at least a modicum of engagement to avoid possible confrontations due to accidents or misperceptions. The most pressing arena requiring better U.S.-Chinese military dialogue was at sea. Starting in the early 1980s, the Chinese government began to undertake a major national effort to transform the People's Liberation Army Navy (PLAN) from a primarily coastal defense force into one that could operate outside China's territorial waters as a "blue-water" force. The expansion in the PLAN's area of operations meant that Chinese warships began to operate in waters regularly patrolled by American military vessels, leading to one of the most serious maritime incidents in Chinese-American history. On October 27, 1994, the USS *Kitty Hawk* and its accompanying battle group unexpectedly detected a Chinese submarine about 200 miles away in the international waters of the Yellow Sea, a region where Chinese submarines had rarely operated before. After U.S. S-3 aircraft dropped sonobuoys to track the submarine, which was sailing back to China, the PLA responded by scrambling warplanes to the scene, resulting in U.S. and Chinese pilots flying within sight of one another. Although neither side publicized the incident, Chinese representatives reportedly told an American military attaché in Beijing

China on The "Yin He" Incident," September 4, 1993, available at <http://www.nti.org/db/china/engdocs/ynhe0993.htm>.

582 Suettinger, *Beyond Tiananmen*, 177.

that their forces would “shoot to kill” should a similar confrontation occur again so close to their coast.⁵⁸³

Concerned about the dangers of further incidents, senior military and civilian leaders in the U.S. Department of Defense (DOD) decided to explore with the Chinese government establishing some sort of agreement designed to mitigate the chances of a clash on the high seas. American civilian and military leaders began to emphasize the need to enhance Chinese military transparency in their speeches and publications. For example, the 1998 DOD *East Asian Strategy Report* states: “Dialogue between the United States and China will also remain critical to ensure that both countries have a clear appreciation of one another’s regional security interests. Dialogue and exchanges can reduce misperceptions between our countries, increase our understanding of Chinese security concerns, and build confidence between our two defense establishments to avoid military accidents and miscalculations.”⁵⁸⁴

Although the American and Chinese defense communities did resume their dialogue, which had been largely suspended since Tiananmen, a series of incidents conspired to disrupt the efforts to achieve a sustained Sino-American defense relationship during the 1990s. Largely because of the 1989 Tiananmen crackdown, the United States and China began the Clinton administration with a minimal bilateral security relationship. It was not until Chas W. Freeman, Jr., Assistant Secretary of Defense for International Security Affairs, visited China in October 1993 that bilateral military-to-military contacts resumed.⁵⁸⁵ Contacts increased after the *Yin He* incident and Secretary William Perry’s visit to China in 1994. They then stalled again following the U.S. decision to grant Taiwan President Lee Teng-hui a visa to speak at Cornell University, his alma mater, in 1995.

583 Thomas W. Lippman and John F. Harris, “Chinese Watched as U.S. Navy Tracked Sub,” *Washington Post*, December 15, 1994.

584 U.S. Department of Defense, *The United States Security Strategy for the East Asia-Pacific Region: 1998* (Washington, D.C., 1998), available at www.defenselink.mil/pubs/easr98.

585 Yuan, “Sino-US Military Relations Since Tiananmen,” 52.

These differences over Taiwan repeatedly disrupted U.S.-Chinese security relations during the Clinton administration. Chinese officials denounced Lee's 1995 visit as implicit official U.S. recognition of his government. More generally, they believed that the United States was encouraging the growth of pro-independence sentiment on the island and thereby impeding reunification. Although Taiwan no longer had a formal defense alliance with the United States, the American government continued to sell arms to the country on the grounds that these weapons helped sustain the status quo by balancing the PLA's growing capabilities. Taiwan also became a more attractive partner when its government instituted economic and political reforms, including the holding of free elections, and emerged as one of East Asia's economic "tigers" with important commercial ties to U.S. companies. In a failed effort to discourage further Taiwanese independence aspirations, the PLA conducted an escalating series of missile launches, amphibious operations, and live-fire demonstrations near Taiwan in 1995 and 1996. Whatever its reservations about Lee's independence aspirations, and notwithstanding its restrained response to the first round of missile tests in 1995, the Clinton administration by March 1996 felt compelled to react more vigorously by deploying two aircraft carrier battle groups around Taiwan. The purpose was both to affirm U.S. support for the island as well as to demonstrate Washington's readiness to use limited military force when necessary to uphold American interests. While denouncing the American actions, the Chinese armed forces declined to contest the U.S. deployment and soon ceased their threatening activities towards Taiwan. Shortly thereafter, the Taiwanese reelected Lee as president.⁵⁸⁶

The Sino-American relationship recovered somewhat after the missile crisis ended, perhaps because the military maneuvers reminded Washington and Beijing of the importance of averting future dangerous confrontations. Bilateral military, economic, and political engagement improved following the October 1997 and June 1998 summit meetings between President Clinton and Chinese President

586 Richard Bush, "Chinese Decisionmaking under Stress: The Taiwan Strait, 1995-2004," in Andrew Scobell and Larry Wortzel, eds., *Chinese National Security Decisionmaking Under Stress* (Carlisle, PA: Strategic Studies Institute of the U.S. Army War College, 2005), 135-146.

Jiang Zemin. Frustrated by a Republican-controlled Congress that (after convening in January 1995) opposed many of his domestic policies and—following revelations about the president’s affair with Monica Lewinsky—even sought to impeach him, Clinton devoted more attention to China-related issues in his second term. Relations with the PRC joined U.S. policies towards the former Yugoslavia, Northern Ireland, NATO enlargement, and the Middle East as high-priority agenda items for the National Security Council, which began to provide increasingly integrated direction for the formation and execution of executive branch policy making toward China.⁵⁸⁷

Nonetheless, ties between the Chinese and American governments remained strained. Chinese officials continued to complain that the administration had precipitated the Taiwan crisis by allowing President Lee Teng-hui to visit the United States. They also objected to growing Japanese-American security cooperation, which Chinese analysts feared might affect a Taiwan scenario, with Japan indirectly supporting American military intervention on Taipei’s behalf.⁵⁸⁸ In addition, Beijing was disturbed that, despite Chinese negotiating concessions, the Clinton administration still had not achieved sufficient support in Congress to secure approval of China’s entry into the World Trade Organization (WTO).⁵⁸⁹ Meanwhile, members of Congress persisted in their complaints about the PRC’s human rights practices (ranging from suppression of civil liberties to allegations of forced abortions and slave labor), its sale of ballistic missiles and nuclear technologies to states of proliferation concern, and its policies towards Tibet and Taiwan. Legislators were further critical of Chinese commercial practices, which they saw as violating WTO principles, as well as Beijing’s perceived attempts to influence American elections through illegal campaign donations.⁵⁹⁰

Some members of Congress also became increasingly concerned about alleged Chinese espionage in the United States. In 1998 and 1999, the House Select Committee on U.S. National Security and

587 Suettinger, *Beyond Tiananmen*, 340; and Nacht, “Domestic Roots of U.S. China Policy,” 50–51.

588 Nacht, “Domestic Roots of U.S. China Policy,” 52.

589 Lampton, *Same Bed, Different Dreams*, 58–59.

590 Suettinger, *Beyond Tiananmen*, 328–331, 351–355.

Military/Commercial Concerns with the People's Republic of China, chaired by Republican Representative Christopher Cox, held hearings in which witnesses accused the Chinese of exploiting their contacts with American military personnel and civilian experts to acquire U.S. nuclear and other defense secrets.⁵⁹¹ Following the publication of the committee's report in May 1999, congressional leaders pressured the Clinton administration to restrict U.S. military contacts with China. Although an independent CIA damage assessment expressed considerable uncertainty about the extent of the alleged Chinese espionage and possible damage, the FY 2000 Defense Authorization Bill explicitly directed the secretary of defense not to authorize military contacts with China that could lead to inappropriate PLA access to an itemized list of advanced U.S. military capabilities.⁵⁹²

It was in this strategic environment that, on March 24, NATO began its bombing campaign (code-named Operation Allied Force) against Serbia, whose government was seen as perpetuating ethnic cleansing against the majority ethnic Albanian population in its province of Kosovo. Chinese officials immediately criticized the decision of the Clinton administration and its allies to employ force without UNSC approval.⁵⁹³ Beijing and Moscow enjoyed, and in this instance were prepared to exercise, the right to veto UNSC resolutions authorizing the use of force in international conflicts.⁵⁹⁴ In the eyes of the Chinese leadership, the humanitarian reasons given by the Americans and their allies to justify the military intervention were doubly objectionable. First, the Chinese government in principle rejected any doctrine that justified foreign interference in a sovereign state's

591 "The Cox Report: Selected Text and Commentaries," *Arms Control Today* (April/May 1999), available at http://www.armscontrol.org/act/1999_04-05/coxam99.asp.

592 Office of the Director of Central Intelligence, "The Intelligence Community Damage Assessment on the Implications of China's Acquisition of US Nuclear Weapons Information on the Development of Future Chinese Weapons: Key Findings," April 21, 1999, available at <https://www.cia.gov/news-information/press-releases-statements/press-release-archive-1999/key-findings.html>.

593 Robert A. Pastor, "China and the United States: Who Threatens Whom?," *Journal of International Affairs*, vol. 54, no. 2 (2001), 432–433.

594 Philip Shenon, "Chinese Embassy Bombing May Hurt Bid to Win Support for Peacekeepers," *New York Times*, May 8, 1999, available at <http://query.nytimes.com/gst/fullpage.html?res=9F07E1DB163FF93BA35756C0A96F958260>.

internal affairs. Second, Washington's decision to provide military support to the separatists in Kosovo held the disturbing implication that the United States might also intervene militarily to defend Taiwan against a Chinese attempt at forceful reunification or to support separatist aspirations in Tibet or Xinjiang.⁵⁹⁵ Even before the embassy bombing, the Kosovo War and other adverse changes in China's security environment led many Chinese analysts to reassess whether the "peace and development" strategy Beijing adopted in 1985 still remained valid or whether China now confronted an imminent threat from an increasingly unilateralist United States.⁵⁹⁶ In this climate of mutual disappointment, disaster occurred.

The Bombing Incident and the Chinese Reaction

A few minutes before midnight on May 7, 1999, Belgrade time, two U.S. Air Force B-2 bombers, having refueled several times on their long transatlantic journey from Whiteman Air Force Base in Missouri, launched five 2,000-pound joint direct attack munitions at a building in the Serbian capital. U.S. government analysts believed the complex housed the Serbian Federal Directorate for Supply and Procurement (the FDSP). The CIA had nominated this target, the first (and last) time its suggested site was bombed during the air campaign. The agency's analysts determined that the FDSP was selling advanced military technologies, such as ballistic missile parts, to rogue states like Libya and Iraq and using the proceeds to finance the Serbian armed forces.⁵⁹⁷ The CIA normally assesses, from a political and strategic perspective, proposed bombing targets nominated by the military rather than submitting its own, for which it lacks specific

595 David M. Lampton and Gregory C. May, *Managing U.S.-China relations in the Twenty-First Century* (Washington, D.C.: Nixon Center, 1999), 55.

596 David M. Finkelstein, "The View from Beijing: U.S.-China Security Relations from Kosovo to September 11, 2001," in Andrew Scobell and Larry M. Wortzel, eds., *China's Growing Military Power: Perspectives on Security, Ballistic Missiles, and Conventional Capabilities* (Carlisle, PA: Strategic Studies Institute of the U.S. Army War College, September 2002), 19–62.

597 Eric Schmitt, "In a Fatal Error, C.I.A. Picked a Bombing Target Only Once: The Chinese Embassy," *New York Times*, July 23, 1999, available at <http://www.international.ucla.edu/eas/newsfile/bombing05-99/990723-nyt1.htm>.

expertise.⁵⁹⁸ As it turned out, the building selected by the agency actually contained the Chinese Embassy, which had moved there in 1997. The bombs destroyed much of the south side of the building, including demolishing the office of the military attaché and, reportedly, China's main intelligence collection center in Europe. The attack killed three Chinese journalists (two of whom may have been intelligence operatives) and wounded twenty other Chinese citizens located at the complex.⁵⁹⁹

The bombing of the Chinese embassy triggered one of the most serious crises in modern Sino-American relations—"the most damaging blow since Tiananmen," in the assessment of one leading analyst.⁶⁰⁰ The incident, heavily covered by China's state-run media, provoked widespread street demonstrations and violence against U.S. interests in Beijing and elsewhere in China. Meanwhile, the Chinese government suspended bilateral talks on international security issues (such as arms control and nonproliferation), human rights, and other subjects of concern to various U.S. government agencies. Chinese authorities also curtailed all Sino-American military exchanges and stopped authorizing U.S. Navy port calls in Chinese ports, including the Special Administrative Region of Hong Kong.⁶⁰¹ They soon forbade American military aircraft from landing in Hong Kong as

598 George Tenet, "DCI Statement on the Belgrade Chinese Embassy Bombing, House Permanent Select Committee on Intelligence Open Hearing," July 22, 1999, available at https://www.cia.gov/news-information/speeches-testimony/1999/dci_speech_072299.html.

599 Eric Schmitt, "Two Victims in U.S. Raid Reportedly Were Spies," *New York Times*, June 25, 1999, available at <http://query.nytimes.com/gst/fullpage.html?res=9C0DE3D7143AF936A15755C0A96F958260>. The site's role as an intelligence collection center would explain why Chinese officials refused to believe the bombing had been an accident since they could plausibly suspect that CIA counterintelligence had directed the air strike to disrupt Chinese espionage operations.

600 Suettinger, *Beyond Tiananmen*, 369; see also Ezra Vogel, "The United States Perspective," in Ezra F. Vogel, ed., *The Age of Uncertainty: The U.S.-China-Japan Triangle from Tiananmen (1989) to 9/11 (2001)* (Cambridge, Massachusetts: Harvard University Asia Center, 2004), 15.

601 June Teufel Dreyer, "Clinton's China Policy," in Todd G. Shields, Jeannie M. Whayne, and Donald R. Kelley, eds., *The Clinton Riddle: Perspectives on the Forty-Second President*, (Fayetteville: University of Arkansas Press, 2004), 170.

well.⁶⁰² The Chinese government also called on the U.N. Security Council to convene an emergency meeting to discuss the incident.⁶⁰³

U.S. Crisis Management

Senior U.S. policy makers were generally shocked and dismayed by this unwelcome and unanticipated crisis. Until this point, their focus had been on winning the Kosovo War and managing relations with NATO allies and Russia. Despite having conducted weeks of exhaustive diplomatic and military efforts, by early May, American political and military leaders had begun to fear that they might exhaust all approved targets prior to inducing a Serbian government surrender. Therefore they frantically solicited targets from non-military experts. In the process, they evidently failed to institute adequate safeguards against attacking useless or, as in this case, counterproductive targets.⁶⁰⁴ Now, by diverting attention away from the issue of curbing Serb atrocities, the Belgrade bombing threatened to weaken the broad international support U.S. policy makers sought to mobilize in order to persuade Serbia to yield to NATO's demands. At a minimum, American officials worried that the accident might inspire further resistance among Serb leaders who hoped China and other countries would intercede on their behalf against NATO.

The U.S. government's China experts were excluded from the initial rounds of White House meetings after the accidental bombings, probably because the administration's senior policy makers, who were not China experts, underestimated how intensely Beijing would respond to the mishap. Military commanders also did not participate extensively in the high-level crisis meetings in Washington, most likely because of their preoccupation with ongoing military operations.⁶⁰⁵

602 Lampton, *Same Bed, Different Dreams*, 60.

603 Text of Chinese Vice-President Hu Jintao's televised speech on May 9, 1999 (Washington time), reproduced in "China's Response, Online NewsHour, May 9, 1999, available at http://www.pbs.org/newshour/bb/europe/jan-june99/china_statement_5-9.html.

604 Steven Lee Myers, "Chinese Embassy Bombing: A Wide Net of Blame," *New York Times*, April 17, 2000, available at <http://query.nytimes.com/gst/fullpage.html?res=9801EED91431F934A25757C0A9669C8B63>.

605 Interviews with former U.S. government policy participants.

The initial U.S. response was simply to hope that expressions of contrition by American leaders would assuage Chinese authorities, who would then suppress the public demonstrations. On Saturday morning, D.C. time, Secretary of Defense William Cohen and CIA Director George Tenet issued a joint statement that called the incident a targeting error and said, “We deeply regret the loss of life and injuries from the bombing.”⁶⁰⁶ On Saturday evening, Secretary of State Madeleine Albright hand-carried a letter of apology, addressed to Foreign Minister Tang Jiaxuan, to the Chinese Embassy. It conveyed “our deep regret about the tragic, accidental fall of bombs on your Embassy in Belgrade.” Yet, the letter said that NATO had to continue its operations to end “Milosevic’s ‘ethnic cleansing.’” The text also called on the Chinese government to reinforce security around the U.S. diplomatic facilities in China.⁶⁰⁷

On May 9, Clinton sent a letter to President Jiang, in which he expressed “apologies and sincere condolences for the pain and casualties brought about by the bombing of the Chinese Embassy.”⁶⁰⁸ He also tried to call Jiang over the Sino-American “hot line,” but the Chinese side initially declined to arrange the call.⁶⁰⁹ In the presence of the Chinese Ambassador, Li Zhaoxing, Clinton also signed the official Chinese condolence book in the Oval Office.⁶¹⁰ Even so, the President seemingly annoyed the Chinese by making clear that he would continue to conduct military operations in the former Yugoslavia, arguing that the embassy bombing “was an isolated, tragic event

606 William S. Cohen and George J. Tenet, “U.S. Deeply Regrets Bombing of Chinese Embassy,” Joint Statement, May 8, 1999, available at <http://usinfo.state.gov/regional/ea/uschina/prcconh8.htm>.

607 “Letter to Minister of Foreign Affairs of the People’s Republic of China from U.S. Secretary of State,” May 8, 1999,” East Asian Studies News File, UCLA Center for East Asian Studies, available at <http://www.international.ucla.edu/eas/NewsFile/Bombing05-99/990508-ussd1.htm>.

608 Suettinger, *Beyond Tiananmen*, 372.

609 Lampton, *Same Bed, Different Dreams*, 375.

610 Stanley O. Roth, “The Effects on U.S.-China Relations of the Accidental Bombing of the Chinese Embassy in Belgrade,” Testimony Before the Senate Committee on Foreign Relations, Subcommittee on East Asian and Pacific Affairs, May 27, 1999, East Asian Studies News File, UCLA Center for East Asian Studies, available at <http://www.international.ucla.edu/eas/NewsFile/Bombing05-99/990527-ussd2.htm>.

while the ethnic cleansing of Kosovo ... is a deliberate and systematic crime.”⁶¹¹ He and other administration representatives insisted that the allied air strikes must continue until Serbian forces ceased their attacks on Kosovo Albanians and accepted the NATO-backed international peace plan.

The carefully framed apologies failed to satisfy the Chinese leadership. Li Zhaoxing, warned that, “If you just say ‘sorry’ and walk away without doing anything else in a thorough manner this will only add [to] the anger and indignation of the Chinese people.”⁶¹² On May 10, the Chinese Foreign Ministry presented a formal note to the United States demanding that Washington and its NATO allies 1) officially apologize to the Chinese government and people, including to the families of those killed or injured; 2) undertake a comprehensive investigation of the incident; 3) promptly publicize the investigation’s findings; and 4) severely punish those responsible. The note also urged NATO to cease military actions against Yugoslavia immediately and resume efforts to achieve a political solution to the Kosovo crisis.⁶¹³ Although U.S. officials indicated that they would consider these Chinese demands for an apology, an investigation, compensation, and punishment for those responsible, they also criticized what they saw as a deliberate campaign by Beijing to inflame the Chinese population against the United States by manipulating the mass media.⁶¹⁴

By this point in the crisis, an interagency working group consisting of representatives from the White House, the Departments of State and Defense, and the intelligence community—and including some of the

611 Cited in “Clinton Apologizes to China Over Embassy Bombing,” May 10, 1999, available at <http://www.cnn.com/WORLD/europe/9905/10/kosovo.china.02/index.html>.

612 “Ambassador Li Zhaoxing,” a NewsHour with Jim Lehrer Transcript, May 10, 1999, *Online NewsHour*, available at http://www.pbs.org/newshour/bb/Europe/jan-june99/li_5-10.html.

613 Chinese Ministry of Foreign Affairs, “Formal Note of 10 May to the U.S. by Foreign Minister Tang Jiaxuan on the Embassy Bombing,” May 10 1999, East Asian Studies News File, UCLA Center for East Asian Studies, available at <http://www.international.ucla.edu/eas/newsfile/bombing05-99/990510-cmfa4.htm>.

614 Lampton, *Same Bed, Different Dreams*, 59–61.

U.S. government's leading China experts—began conferring regularly to advise the NSC principals on policy options. Most working group participants subsequently acknowledged feeling they were making decisions excessively hastily, with incomplete information. Based on their understanding of Chinese political culture as well as an assessment of Beijing's goals and strategy, the group recommended making a greater effort to show remorse in public and to establish a backchannel line of communication with the Chinese government to head off the mounting crisis.⁶¹⁵

Like President Bush after Tiananmen, the Clinton administration decided to reach out to senior Chinese leaders directly but behind the scenes, beyond the attention of the media and the Congress. American officials privately indicated to their Chinese counterparts that Washington would soon provide an explanation for the tragic accident and would take other “tangible steps” to make amends. While never formally agreeing to meet the list of demands enumerated by the Chinese Foreign Ministry, the NSC principals strenuously sought, particularly after the Kosovo conflict successfully ended, to address as many of the Chinese demands regarding the bombing fiasco as possible. When Clinton succeeded in reaching Jiang by phone on May 14, he told the Chinese president that the U.S. government would both undertake a comprehensive investigation into the incident and send a high-level delegation to brief Beijing on the outcome. The exchange resulted in an end to the public protests and a decrease in bilateral tensions.⁶¹⁶

Independent of the Chinese calls for a full explanation, the U.S. government launched its own investigation of its military and intelligence procedures to discover how the target acquisition process had gone awry. The investigation, led by U.S. Deputy Secretary of Defense John Hamre and Chairman of the Joint Chiefs of Staff Joseph W. Ralston, remains classified.⁶¹⁷ After the initial review, Secretary Cohen announced that the department would institute new procedures at the National Imagery and Mapping Agency and

615 Interviews with former U.S. government policy participants.

616 Wu Xinbo, “Understanding Chinese and U.S. Crisis Behavior,” *Washington Quarterly*, vol. 31, no. 1 (Winter 2007-08), 65.

617 Myers, “Chinese Embassy Bombing.”

the Defense Intelligence Agency to develop more fail-safe targeting procedures. He also said the intelligence community and the State Department would improve their information collection and data cross-checking procedures to avert future accidents.⁶¹⁸

After waiting three weeks in a futile effort to convince Washington to send a more senior envoy, the Chinese government agreed to accept a U.S. delegation in Beijing in mid-June to receive a report of the findings. Led by Presidential Special Envoy and Undersecretary of State for Political Affairs Thomas Pickering, the third-ranking official in the State Department, the U.S. delegation included representatives from the NSC staff, the intelligence community, the Department of State, and the civilian Office of the Secretary of Defense.⁶¹⁹ The Defense Department appeared unenthusiastic about the Pickering mission, and refused to include a uniformed military officer on the trip.⁶²⁰ Some members of Congress and the press also objected. In particular, they criticized the Chinese government for inflaming popular feelings to organize mass anti-American protests to force concessions from the United States on other issues.⁶²¹ Representative Cox complained that, "The organization of anti-American demonstrations has laid bare the manipulative nature of the Communist government," which he claimed was seeking "to gain leverage in negotiations" with the United States.⁶²² Stanley Roth, Assistant Secretary of State for East Asian and Pacific Affairs, had

618 Jim Garamone, "Cohen: Accidental Embassy Bombing Won't Halt Allied Force,"

American Forces Press Service, available at <http://www.defenselink.mil/news/newsarticle.aspx?id=42066>.

619 Paul H. B. Godwin, "Decisionmaking Under Stress: The Unintentional Bombing of China's Belgrade Embassy and the EP-3 Collision," in Andrew Scobell and Larry Wortzel, eds., *Chinese National Security Decisionmaking Under Stress* (Carlisle, PA: Strategic Studies Institute of the U.S. Army War College, 2005), 168.

620 Suettinger, *Beyond Tiananmen*, 374.

621 Simon Shen, "Nationalism or Nationalist Foreign Policy? Contemporary Chinese Nationalism and its Role in Shaping Chinese Foreign Policy in Response to the Belgrade Embassy Bombing," *Politics*, vol. 24, no. 2 (2004), 126.

622 Cited in Bruce Einhorn et al., "China: After the Rage," *Business Week*, International Edition (May 14, 1999), available at http://www.businessweek.com/1999/99_21/b3630036.htm.

to reassure Congress that the administration would not yield to such tactics:

I understand that the Chinese word for “crisis” is a combination of the characters for “danger” and “opportunity.” There are those who undoubtedly speculate, both in China and the United States, that perhaps the crisis of the last few weeks . . . represents an opportunity for China to press for concessions from the U.S. on issues such as the terms for China’s WTO accession, human rights, Tibet, and non-proliferation. These speculators are dangerously mistaken. U.S. policy in these areas is determined by clear and long-standing assessments of U.S. self-interest and fundamental values. Our standards will not change in reaction to either the bombing error in Belgrade or the Chinese reaction to it.⁶²³

On June 17, Pickering and his interagency team tried to use PowerPoint slides and other visual aids to demonstrate that the bombing was accidental. Although Pickering reviewed multiple errors, he highlighted three major failures: a flawed technique to locate the intended target, a reliance on inaccurate and incomplete databases, and a defective post-selection review process. Pickering added that the CIA and Defense Department had not yet interviewed all those involved in the bombing because the Kosovo War had only recently finished. He indicated that the U.S. government would determine appropriate disciplinary actions after completing this review.⁶²⁴

Unsurprisingly, the Chinese rejected Pickering’s explanation as inadequate and unconvincing.⁶²⁵ It is unclear whether anything

623 Roth, “Effects on U.S.-China Relations of the Accidental Bombing.”

624 U.S. Department of State, “Oral Presentation by Under Secretary of State Thomas Pickering on June 17 to the Chinese Government Regarding the Accidental Bombing of the PRC Embassy in Belgrade,” July 6, 1999, available at <http://beijing.usembassy-china.org.cn/070699.html>.

625 Chinese Ministry of Foreign Affairs, “U.S. President’s Personal Envoy in China to Present the U.S. Government’s Report on Its Investigation into the Bombing of the Chinese Embassy in the Federal Republic of Yugoslavia-- The Chinese Government Emphasizes that the U.S. Side Must Give Satisfactory Account and Explanation of the Incident,” East Asian Studies News File, UCLA Center

Pickering or any other American could have said would have made a difference. According to Robert L. Suettinger, a U.S. government expert on China, when he visited the Chinese Ministry of Foreign Affairs in early June, the Chinese officials “made it clear that nothing Pickering said would be accepted by the Chinese government as a satisfactory explanation of the bombing. They indicated they would hear the undersecretary out but that his explanation would be rejected.”⁶²⁶

Nevertheless, the Chinese government declined to press the matter further on the official level after the Pickering visit. The Clinton administration had made clear it would not make concessions on Taiwan, the terms for China’s entry into the WTO, or other bilateral disputes to assuage Chinese anger over the attack. Although Chinese officials subsequently provided increased economic and other assistance to Milosevic’s regime, they did not veto the NATO-backed UN Security Council Resolution that ended the Kosovo War on Western terms, despite earlier threats to do so.⁶²⁷ The Chinese government also did not pursue a formal anti-American military alliance with Russia, despite their shared concern about NATO’s unsanctioned humanitarian intervention in Kosovo.⁶²⁸

On July 30, the two sides announced an agreement in which the United States would pay \$4.5 million to the 27 people injured in the bombing and to the families of the three Chinese killed in the attack.⁶²⁹ After Clinton and Jiang held productive discussions at the September 1999 Asian Pacific Economic Cooperation (APEC) summit in Auckland, U.S. National Security Advisor Sandy Berger said the Sino-American relationship was “back on track.”⁶³⁰ In November

for East Asian Studies, June 1999, <http://www.international.ucla.edu/eas/NewsFile/bombing05-99/9906-cmfa1.htm>.

626 Suettinger, *Beyond Tiananmen*, 375.

627 Nebojsa Spaic, “Belgrade to Beijing: A Trump Card in Chinese Political Strategy,” *Harvard Asia Pacific Review* (Summer 2000), http://hcs.harvard.edu/~hapr/summer00_tech/belgrade.html.

628 Richard Weitz, “Why Russia and China Have Not Formed an Anti-American Alliance,” *Naval War College Review*, vol. 56, no. 4 (Autumn 2003), 39–61.

629 Seth Faison, “U.S. to Pay China for Embassy Bombing,” *New York Times*, July 31, 1999, <http://query.nytimes.com/gst/fullpage.html?res=980CE1D91231F932A05754C0A96F958260>.

630 Edward Chen and Mark Magnier, “US-China Relations ‘Back on Track’ after

1999, U.S. and Chinese officials reached a deal on China's entry into the WTO. In December 1999, the American government agreed to pay \$28 million to the Chinese government as compensation for the damage to its Belgrade Embassy. The settlement also required the PRC to pay \$2.87 million to the United States as compensation for the damage to its diplomatic facilities in China from the ensuing mass demonstrations. In early 2000, China and the United States resumed military-to-military contacts.⁶³¹

Even so, the Chinese government downplayed the CIA's decision in April 2000 to dismiss a single mid-level officer for the targeting error, and reprimand six other agency employees, as inadequate. Chinese Foreign Ministry spokesperson Zhu Bangzao reaffirmed his government's demands that the Clinton administration "punish those responsible," a position that may also have reflected Chinese suspicions that rogue elements within the U.S. military and intelligence community were behind the attack.⁶³² In any case, the Belgrade bombing, combined with the overall NATO decision to wage war in the former Yugoslavia despite Chinese and Russian opposition, had a profoundly negative effect on Chinese views of American foreign policy.⁶³³

Crisis III: The EP-3 Collision

By April 2001, the Sino-American relationship still had not fully recovered from the May 1999 Belgrade embassy bombing. Whatever problems the Chinese leadership had with the Clinton administration's penchant for humanitarian interventions, Beijing's assessment of new Republican President, George W. Bush, could hardly have been much better. During his 1999–2000 election campaign, Governor Bush and his advisors had criticized both the Clinton administration,

Clinton, Jiang Mend Fences," *Los Angeles Times*, September 12, 1999.

631 Steven Lee Meyers, "Chinese Military to Resume Contacts with the Pentagon," *New York Times*, January 6, 2000.

632 Steven Lee Myers, "China Rejects U.S. Actions on Bombing of Embassy," *New York Times*, April 10, 2000, available at <http://www.international.ucla.edu/eas/newsfile/bombing05-99/000411-nyt.htm>.

633 Robert A. Manning, Ronald Montaperto, and Brad Roberts, eds., *China, Nuclear Weapons, and Arms Control: A Preliminary Assessment* (New York: Council on Foreign Relations, 2000), 53.

for pursuing an allegedly overly soft policy toward the Chinese government, and Beijing, for its repressive domestic practices and uncooperative foreign policies. Bush also spoke in favor of improving ties with Taiwan and took issue with Chinese authorities for restricting religious freedoms. He characterized China as a “competitor, not a strategic partner.”⁶³⁴

After assuming office, members of the Bush administration expressed unease about the implications of China’s growing economic and military strength.⁶³⁵ The new administration’s senior policy makers, who were not China experts, initially formulated policies toward China that reflected an assumption that Washington was dealing with a potential strategic competitor.⁶³⁶ They sought to reinforce the U.S. military presence and key defense alliances in East Asia, including with Australia, Japan, and Taiwan. The most visible element of the Bush administration’s early policies regarding China consisted of warnings to Beijing not to employ force against Taiwan. In April 2001, as the administration was preparing for the annual meeting when they inform their Taiwanese counterparts what military equipment Washington was prepared to sell Taiwan, President Bush publicly pledged to do “whatever it takes” to defend the island.⁶³⁷

Chinese officials complained about the Bush administration’s overtures to Taiwan and its commitment to strengthening U.S. nuclear forces and missile defenses.⁶³⁸ They also protested against

634 Cited in Andrew Scobell and Larry M. Wortzel, “China’s Response to a Firmer America,” in Andrew Scobell and Larry M. Wortzel, eds., *China’s Growing Military Power: Perspectives on Security, Ballistic Missiles, and Conventional Capabilities* (Carlisle, PA: Strategic Studies Institute, U.S. Army War College, 2002), 1.

635 See for example Office of the White House Press Secretary, “Press Briefing by Ari Fleischer,” May 3, 2001, available at <http://www.whitehouse.gov/news/briefings/20010503.html>.

636 Nacht, “Domestic Roots of U.S. China Policy,” 57.

637 “Bush Vows ‘Whatever it Takes’ to Defend Taiwan,” CNN Inside Politics, April 25, 2001, available at <http://archives.cnn.com/2001/ALLPOLITICS/04/25/bush.taiwan.03>; see also Kenneth Lieberthal, “U.S. Policy Toward China,” *Brookings Institution Policy Brief*, no. 72 (March 2001), 6–7.

638 Su Ge, “Sino-American Relations: Climbing High to See Afar,” *Contemporary International*

Relations (September 2001), available at http://www.uscc.gov/researchpapers/2000_2003/pdfs/sino.pdf.

alleged U.S. overflights of Chinese territory and encounters between Chinese and U.S. naval ships. American political and military officials countered these Chinese objections by arguing that the United States had the right to maintain the military balance across the Taiwan Strait as well as sustain an air and maritime presence in international waters.⁶³⁹ When the Chinese delegation to the Military Maritime Consultative Agreement—a U.S.-China forum established in 1998 to discuss maritime safety and operations—complained about what Beijing calculated to be a growing number of flights, the American representative replied that, “it is international airspace and we have no intention of modifying what we are doing.”⁶⁴⁰

On April 1, 2001, a U.S. Navy EP-3E Aries II surveillance plane, on a routine reconnaissance flight over the South China Sea, about 70 miles off the Chinese coast, collided with one of the two Chinese F-8 II fighter jets that had flown to intercept and escort it. The incident occurred beyond China’s territorial seas, which extend 12 miles from the Chinese coast, but inside China’s self-declared 200 nautical-mile Exclusive Economic Zone (EEZ).⁶⁴¹ The Chinese plane crashed into the ocean, killing the pilot, while the 24 crew members aboard the EP-3 managed to land the crippled plane at a Chinese military airfield on Hainan Island. The PLA immediately detained the 24 crew members as well as the plane, while the Chinese government initially ignored American inquiries about their status. In Washington, American officials soon began to assess how to secure the safe return of the crew and plane while limiting the damage to U.S.-China relations from the episode.

The U.S. Response to the Incident

Since the crisis occurred so early in the life of the new administration, the executive branch had yet to establish clear interagency procedures regarding China or many other issues. Vice President Richard Cheney and National Security Advisor Condoleezza Rice were formally

639 Thomas E. Ricks, “Anger Over Flights Grow in Past Year,” *Washington Post*, April 7, 2001.

640 Cited in Godwin, “Decisionmaking Under Stress,” 174.

641 Radha Sinha, *Sino-American Relations* (New York: Palgrave MacMillan, 2003), 95–96.

in charge of coordinating national security policy.⁶⁴² The two had perhaps more influence than normal on policy making during the crisis because President George W. Bush was then relatively inexperienced in foreign policy and inclined to defer to his senior advisors.⁶⁴³ Secretary of State Colin Powell, Secretary of Defense Donald Rumsfeld, U.S. Ambassador to Beijing Joseph Prueher, and the highest uniformed military leaders also helped shape the U.S. response to the EP-3 crisis.⁶⁴⁴ Historians assess Cheney and Rumsfeld as most inclined towards treating China as an emerging strategic adversary, whereas Powell appeared more open towards approaching Beijing as a potential partner for managing common Sino-American security problems as well as hedging against China's becoming a potential competitor.⁶⁴⁵ At the time of the EP-3 collision, Rumsfeld's influence over the DOD bureaucracy was limited since many political appointees had yet to assume their posts.⁶⁴⁶ Nevertheless, the secretary and his few senior advisors that had already started working at the Pentagon took charge of managing the crisis and soon became convinced that the Chinese government was misleading observers about events.⁶⁴⁷

During the policy implementation phase of the crisis, the State Department assumed its traditional diplomatic role in leading the initial negotiations with the Chinese Foreign Ministry for the return of the crew and plane. Since many mid-level State Department managers had also yet to be confirmed—including the intended Assistant Secretary for East Asian and Pacific Affairs James Kelly—Deputy Secretary Richard Armitage took the lead role in managing policy implementation. He enjoyed direct access to Secretary Powell

642 Dennis C. Blair and David B. Bonfili, "The April 2001 EP-3 Incident: The U.S. Point of View," in ed. Michael D. Swaine and Zhang Tuosheng, eds., *Managing Sino-American Crises*, (Washington: Carnegie Endowment for International Peace, 2006), 379.

643 Garrison, *Making China Policy*, 166.

644 Blair and Bonfili, "April 2001 EP-3 Incident," 379.

645 Michael Swine, "Reverse Course? The Fragile Turnaround in U.S.-China Relations," *Carnegie Endowment for International Peace Policy Brief*, no. 22 (February 2003), 1–2, available at <http://www.carnegieendowment.org/files/Policybrief22.pdf>.

646 Garrison, *Making China Policy*, 170.

647 Vogel, "The United States Perspective," 12.

and, in the absence of many lower level political appointees, dealt directly with the department's career officials and China experts in the Bureau of East Asian and Pacific Affairs. Meanwhile, Powell led the administration's outreach efforts to Congress and the public, striving to moderate those calling for economic sanctions while reassuring others concerned about a possible armed confrontation between China and the United States.⁶⁴⁸

Immediately after the collision, the Chinese and American governments began to argue over who was responsible for the incident and under what conditions China would release the crew and airplane. Partly due to the collision's timing—it occurred in the middle of the night in Washington—the initial public response from the U.S. government came from the U.S. Pacific Command (PACOM) in Hawaii. The command issued a statement reporting that there had been “contact between one of the Chinese aircraft and the EP-3, causing sufficient damage for the U.S. plane to issue a “Mayday” signal and divert to an airfield on Hainan Island, PRC.” After relating that PACOM had “communicated our concerns about this incident” to the Chinese government through the U.S. Embassy in Beijing and the Chinese Embassy in Washington, the command stated that, “We expect that the PRC Government will respect the integrity of the aircraft and the well-being and safety of the crew in accordance with international practices, expedite any necessary repairs to the aircraft, and facilitate the immediate return of the aircraft and crew.”⁶⁴⁹

PACOM commander, Admiral Dennis Blair, held a press conference in which he blamed the Chinese pilot for the accident, complained about Beijing's refusal to permit the EP-3 crew to communicate with U.S. government representatives or their families, and warned the Chinese military that they could not board or keep the plane, which he insisted enjoyed “sovereign immunity” in such emergency situations. “We are waiting, right now,” Blair concluded, “for the Chinese government to give us the kind of cooperation that's expected of countries in situations like this, so that we can repair the plane, our

648 Garrison, *Making China Policy*, 170.

649 “Statement for Release—U.S. Pacific Command Revised,” April 1, 2001, available at http://www.intellnet.org/resources/pacom_ep3_homepage/imagery/archive/0103photos/010331.htm.

people can return, and we can go on about our business.”⁶⁵⁰ It was only several hours later, after Washington opened for business, that senior State Department officials also attempted, equally ineffectively, to contact the crew and senior Chinese officials.⁶⁵¹ Despite having developed close contacts with the Chinese military while serving as PACOM commander, Ambassador Prueher found that no one in the PLA hierarchy would answer his telephone calls.⁶⁵² As a result, Prueher and the rest of the U.S. embassy team in Beijing communicated primarily with the Chinese Foreign Ministry during the crisis.⁶⁵³

Chinese analysts consider PACOM’s initial response insensitive given that the collision involved a U.S. spy plane, rather than a commercial aircraft, and that only the Chinese pilot died in the crash. They also believe that Beijing may have considered the Pentagon’s decision to deploy U.S. Navy destroyers in the South China Sea to assist with recovering the U.S. crew and finding the downed Chinese pilot as unduly threatening.⁶⁵⁴ An editorial in the *China Daily* attacked Blair for being “confused about who is endangering whom” and complained that, “The only concern of officials in Washington is how soon the Chinese Government will return the US Navy surveillance plane and its 24 crew members.” The paper also underscored the damage on the relationship inflicted by the embassy bombing: “Two years ago, a US plane on a NATO mission bombed the Chinese Embassy in Belgrade in May 1999, an act which claimed the lives of three Chinese journalists. Washington’s explanation? An accident. But who believes a country with the world’s most sophisticated technology is capable of making so many accidental moves?”⁶⁵⁵ Even so, the Chinese press

650 United States Pacific Command,” Transcript: Admiral Dennis C. Blair, Commander in Chief, U.S. Pacific Command, U.S. and Chinese aircraft incident,” April 1, 2001, available at

http://www.intellnet.org/resources/pacom_ep3_homepage/speeches/sst2001/010401blairplane.htm.

651 See the comments by Richard Armitage on “Interview of the Deputy Secretary of State on China,” The News Hour with Jim Lehrer, April 13, 2001, available at <http://www.state.gov/s/d/former/armitage/remarks/2001/2297.htm>.

652 Kevin L. Pollpeter, U.S.-China Security Management: Assessing the Military-to-Military Relationship (Santa Monica, California: RAND, 2004), 50.

653 Jimbo, “Understanding Chinese and U.S. Crisis Behavior,” 68, 70–71.

654 Ibid., 67–68.

655 “US Excuses Betray Its Weaknesses,” *China Daily*, April 2, 2001, available at

exercised more restraint in the aftermath of the EP-3 incident than it had after the 1999 Belgrade embassy bombing. Chinese authorities also did not encourage the kind of mass public protests that occurred two years earlier.

When President Bush was first briefed on the incident in the evening of April 1, he reasoned that, since the collision was a simple accident, the Chinese authorities would quickly release the crew and then engage in talks over returning the plane. On this basis, the president decided not to take any action himself.⁶⁵⁶ After the Chinese proved more recalcitrant than anticipated, Bush released a statement the following evening that, while declining to blame anyone for the collision and offering to help search for the downed PLA pilot, criticized Beijing for failing to allow American authorities to establish direct contact with the crew pending their quick return.: “Our priorities are the prompt and safe return of the crew, and the return of the aircraft without further damaging or tampering. The first step should be immediate access by our embassy personnel to our crew members. I am troubled by the lack of a timely Chinese response to our request for this access.”⁶⁵⁷

The following morning, President Jiang made his first public statement on the crisis. He demanded that Washington accept full responsibility, apologize to the Chinese people, and end all surveillance flights off the Chinese coast.⁶⁵⁸ Bush responded by escalating the rhetoric in his comments later that day. On April 3, the president made a very deliberate statement from the Rose Garden: “This is an unusual situation, in which an American military aircraft had to make an emergency landing on Chinese soil. Our approach has been to keep this accident from becoming an international incident. We have allowed the Chinese government time to do the right thing.

<http://www.china.org.cn/english/10108.htm>.

656 Zhang Tuosheng, “The Sino-American Aircraft Collision,” in Michael D. Swaine and Zhang Tuosheng, eds., *Managing Sino-American Crises*, (Washington: Carnegie Endowment for International Peace, 2006), 395.

657 Office of the White House Press Secretary, “Statement by the President on American Plane and Crew in China,” April 2, 2008, available at <http://www.whitehouse.gov/news/releases/2001/04/20010402-2.html>.

658 Tuosheng, “The Sino-American Aircraft Collision,” 396.

But now it is time for our servicemen and women to return home. And it is time for the Chinese government to return our plane.” He added a clear warning to Beijing: “This accident has the potential of undermining our hopes for a fruitful and productive relationship between our two countries. To keep that from happening, our servicemen and women need to come home.”⁶⁵⁹

Shortly before Bush’s statement, the Chinese authorities finally allowed a U.S. embassy team, headed by the Defense Attaché in Beijing, Brigadier General Neal Sealock, to visit the crew.⁶⁶⁰ At this point, the State Department assumed the lead role in managing the crisis, both in Washington, where it headed the interagency group established to develop policy, and in the subsequent negotiations with the Chinese Foreign Ministry, to secure the crew’s release.⁶⁶¹ The White House and Department of Defense remained involved, but the former took pains to constrain the latter—most notably by directing PACOM to withdraw the three destroyers it had sent to the South China Sea after the collision and by instructing Secretary Rumsfeld to avoid making public statements critical of the PLA.⁶⁶²

An important issue throughout the crisis was what words the U.S. government would formally adopt to express American regret for the accident. Many U.S. officials were reluctant to meet the Chinese demand that the American government formally apologize for the collision. Secretary Powell stated that, “I have heard some suggestion of an apology, but we have nothing to apologize for. We did not do anything wrong.”⁶⁶³ If anything, many influential U.S. policy makers blamed the Chinese for the mishap. Admiral Blair related at his April 1

659 Office of the White House Press Secretary, “Statement by the President,” April 3, 2001, available at <http://www.whitehouse.gov/news/releases/2001/04/20010403-3.html>.

660 Craig Smith, “U.S. Officials Meet with 24 Still Detained with Aircraft,” *New York Times*, April 4, 2001, available at <http://query.nytimes.com/gst/fullpage.html?res=950CE0D61F3FF937A35757C0A9679C8B63>.

661 Ximbo, “Understanding Chinese and U.S. Crisis Behavior,” 69.

662 Blair and Bonfili, “April 2001 EP-3 Incident,” 382; and Ximbo, “Understanding Chinese and U.S. Crisis Behavior,” 69.

663 “Briefing for the Press aboard Aircraft En Route to Andrews Air Force Base,” April 3, 2001, available at <http://www.state.gov/secretary/former/powell/remarks/2001/1932.htm>.

press conference “that the intercepts by Chinese fighters over the past couple months have become more aggressive to the point we felt they were endangering the safety of Chinese and American aircraft.”⁶⁶⁴

U.S. officials worried about the legal implications of an official apology, and therefore wanted to avoid language that implied financial or other culpability on the part of the United States. In contrast, Chinese leaders professed to place great stock in having senior U.S. government officials express sincere remorse at the collision. Complex cultural differences as well as linguistic and other nuances differentiating Chinese and American political discourse complicated this search for common language.⁶⁶⁵

Seeking to end the deadlock, however, Powell and Bush did make public statements affirming their “regret” over the collision and the resulting loss of the Chinese pilot. On April 4, Powell told the Washington press corps, “We regret that the Chinese plane did not get down safely, and we regret the loss of the life of that Chinese pilot. But now we need to move on and we need to bring this to a resolution, and we’re using every avenue available to us to talk to the Chinese side, to exchange explanations and move on.”⁶⁶⁶ In a media appearance the following day, President Bush affirmed this balanced tone: “First, I regret that a Chinese pilot is missing, and I regret one of their airplanes is lost. And our prayers go out to the pilot, his family. Our prayers are also with our own servicemen and women. And they need to come home. The message to the Chinese is, we should not let this incident destabilize relations. Our relationship with China is very important. But they need to realize that it’s time for our people to be home.”⁶⁶⁷

664 Admiral Blair, “U.S. and Chinese aircraft incident.”

665 For an analysis of these various issues that identifies shared as well as competing metaphorical conceptualizing during the crisis see Edward Slingerland, Eric M. Blanchard, and Lyn Boyd-Judson, “Collision with China: Conceptual Metaphor Analysis, Somatic Marking, and the EP-3 Incident,” *International Studies Quarterly*, vol. 51 (2007), 53–77.

666 U.S. Department of State, “Secretary Colin L. Powell: Remarks Following Meeting with King Abdullah of Jordan,” April 4, 2001, available at <http://www.state.gov/secretary/former/powell/remarks/2001/2006.htm>.

667 Office of the White House Press Secretary, “Remarks by the President at American Society of Newspaper Editors Annual Convention,” April 5, 2001, available at

Between April 5 and April 11, Ambassador Prueher and Assistant Foreign Minister Zhou Wenzhong held eleven rounds of talks over the precise wording of a joint statement to end the dispute. President Bush or Secretary Powell had to approve all changes to the U.S. draft.⁶⁶⁸ The letter finally released on April 11 met all U.S. Government objectives. It secured the return of the crew and plane, it did not require a formal American apology for the collision, and it placed no restrictions on future U.S. foreign and defense activities in the region. The text merely stated that the United States was “very sorry” about the loss of the pilot and “very sorry” that its plane landed on Chinese territory without Beijing’s permission. The text also welcomed a joint investigation of the issue in order to resolve the remaining differences.⁶⁶⁹ The Chinese released the crew on April 12.

Chinese analysts credit the softer language adopted by Bush and other U.S. officials—along with the flexible wording of the “Letter of the Two Sorries”—with ending the deadlock.⁶⁷⁰ Some American authors believe that the president’s earlier statements underscoring the possible damage to Sino-American relations if China did not soon release the crew, combined with moves in Congress to prevent Beijing from hosting the 2008 Summer Olympics, had a greater impact by leading Chinese policy makers to weigh more heavily the potential costs involved in detaining the crew.⁶⁷¹

With the crew now free, the U.S. government toughened its stance to secure the EP-3’s return. On April 13, Armitage told the media that, “Our point of view is that it is an \$80 million aircraft, it’s ours, and

<http://www.whitehouse.gov/news/releases/2001/04/20010405-5.html>.

668 Blair and Bonfili, “April 2001 EP-3 Incident,” 383.

669 “U.S. Apology Letter to China,” *The Guardian*. April 11, 2001, available at <http://www.guardian.co.uk/china/story/0,7369,471919,00.html>. For a discussion of the linguistic issues involved see Kate Goldberg, “Sorry the Hardest Word,” BBC News, April 11, 2001, available at <http://news.bbc.co.uk/2/hi/asia-pacific/1263762.stm>.

670 Ximbo, “Understanding Chinese and U.S. Crisis Behavior,” 69–70.

671 James R. Lilley, “Foreword,” in Andrew Scobell and Larry M. Wortzel, eds., *China’s Growing Military Power: Perspectives on Security, Ballistic Missiles, and Conventional Capabilities* (Carlisle, PA: Strategic Studies Institute, U.S. Army War College, 2002), v–vii.

that the Chinese have a responsibility to return it to us.”⁶⁷² President Bush and other American officials also renewed their criticism of the long detention of the crew and reaffirmed their right to conduct U.S. surveillance flights in international airspace. On April 12, Bush made the following statement after meeting with the crew at the White House:

From all the evidence we have seen, the United States aircraft was operating in international air space, in full accordance with all laws, procedures and regulations and did nothing to cause the accident.

The United States and China have agreed that representatives of our governments will meet on April 18th to discuss the accident. I will ask our United States representative to ask the tough questions about China’s recent practice of challenging United States aircraft operating legally in international air space.

Reconnaissance flights are part of a comprehensive national security strategy that helps maintain peace and stability in our world. During the last 11 days, the United States and China have confronted strong emotions, deeply held and often conflicting convictions and profoundly different points of view. China’s decision to prevent the return of our crew for 11 days is inconsistent with the kind of relationship we have both said we wish to have.⁶⁷³

The next day, Rumsfeld gave the Pentagon press corps a detailed briefing on the EP-3 collision. He explained that, “with the crew safely back in the United States...it was time to set out factually what actually took place.” The Secretary explicitly blamed the Chinese pilot for causing the crash by acting “aggressively” with the intent “to harass the crew.” Rumsfeld displayed a video of a similar incident in January 2001 to underscore that, “It was not the first time that our

672 See the comments by Richard Armitage on “Interview of the Deputy Secretary of State on China,” *The News Hour with Jim Lehrer*, April 13, 2001, available at <http://www.state.gov/s/d/former/armitage/remarks/2001/2297.htm>.

673 Office of the White House Press Secretary, “Remarks by the President upon the Return From China of U.S. Service Members,” April 12, 2001, available at <http://www.whitehouse.gov/news/releases/2001/04/20010412-6.html>.

reconnaissance and surveillance flights flying in that area received that type of aggressive contact from interceptors.⁶⁷⁴

The Chinese Foreign Ministry responded by showing their own video footage that purportedly documented “dangerous and aggressive” flying by American fighter jets the previous year.⁶⁷⁵ Lu Shumin, head of the Chinese delegation negotiating the disposition of the plane, complained that, “especially after the Chinese side allowed the people aboard the U.S. plane to leave China, some ranking U.S. officials, disregarding facts and confounding right and wrong, made a lot of highly irresponsible remarks on the incident, in an attempt to shift the responsibility onto the Chinese side.” Lu termed unacceptable that, “Some of them even threatened to link the incident with other issues involving China-U.S. relations.”⁶⁷⁶ Despite Lu’s stance and other Chinese warnings about what they termed the administration’s overly confrontational policy towards Beijing, the U.S. government soon announced its unprecedented offer to sell Taipei 4 Kidd-class guided-missile destroyers, eight diesel submarines, twelve P-3 anti-submarine aircraft, and other weapons systems designed to enhance Taiwan’s defenses against Chinese military threats.⁶⁷⁷

The Department of Defense, which was most eager to recover the aircraft, ideally by repairing it sufficiently on site to allow it to fly back on its own power, initially assumed the lead role in negotiating the plane’s disposition with the PRC.⁶⁷⁸ Still uncomfortable about allowing their military to engage in direct dialogue with foreign governments, the Chinese government declined U.S. proposals to employ the Military Maritime Consultative Agreement and kept the

674 Office of the Assistant Secretary of Defense (Public Affairs), “Secretary Rumsfeld Briefs on EP-3 Collision,” April 13, 2001, available at <http://www.defenselink.mil/transcripts/transcript.aspx?transcriptid=1066>.

675 “Evidence Is Sufficient: US Spy Plane at Fault,” *China Daily*, April 20, 2001, available at <http://www.china.org.cn/english/11585.htm>.

676 Cited in “Efforts Needed from Both Sides to Solve the Collision Incident,” Xinhua, April 20, 2001, available at <http://www.china.org.cn/english/11506.htm>.

677 Centre for Nonproliferation Studies, Monterey Institute of International Studies, Jing-dong Yuan, “Bush’s Hawks Circle over Policy,” *South China Morning Post*, July 24, 2002, available at <http://cns.miis.edu/pubs/other/bushhawk.htm>.

678 Godwin, “Decisionmaking under Stress,” 180.

Chinese Foreign Ministry in charge of the negotiations, even though their partners were now the American defense community.⁶⁷⁹ After a few days of fruitless preliminary talks over the plane, DOD recalled its negotiating team from Beijing. The Pentagon then let the State Department resume its lead negotiating role with the Chinese.⁶⁸⁰

The talks made more progress under Department of State leadership, perhaps because the American negotiators accepted the Chinese position that the EP-3 would not fly home directly but instead would have its wings and tails removed for transportation aboard a Russian Antonov-124 heavy-lift aircraft. On May 29, the U.S. Embassy in Beijing announced an agreement based on these terms.⁶⁸¹ The two governments could not concur on an appropriate American monetary payment to China. The Chinese bill, which amounted to around \$1 million, included the costs of upkeep for the entire period they detained the crew. Although DOD offered less than \$35,000, the Chinese authorities allowed the Department to retrieve the EP-3 that summer.⁶⁸² The repaired plane resumed flying in November 2002.⁶⁸³

The September 11, 2001, terrorist attacks against the United States, and the subsequent U.S. military invasions of Afghanistan and Iraq, soon led Chinese and American policy makers to devote more attention to other issues, including their common interests in countering regional terrorism and nuclear proliferation in East Asia. President Bush and President Jiang participated in several summit meetings that helped stabilize relations, especially since the Bush administration backed

679 Shirley A. Kan et al, *China-U.S. Aircraft Collision Incident of April 2001: Assessments and Policy Implications* (Washington, D.C.: Congressional Research Service, October 10, 2001), 6, available at <http://www.fas.org/sgp/crs/row/RL30946.pdf>.

680 Clay Chandler, "No Deal Reached on Plane," *Washington Post*, April 20, 2001,

681 Erik Eckholm, "Spy Plane Will Return to U.S. in Pieces as Cargo," *New York Times*, May 29, 2001, available at <http://www.nytimes.com/2001/05/29/world/29CHIN.html?ex=1205640000&en=1cc7cb45084d5545&ei=5070>.

682 Elisabeth Rosenthal, "China Spurns Spy Plane Offer as Inadequate," *New York Times*, August 13, 2001, available at <http://query.nytimes.com/gst/fullpage.html?res=9E04E7D9113FF930A2575BC0A9679C8B63>.

683 "Downed Spy Plane Is Back in the Air," *New York Times*, November 17, 2002, <http://query.nytimes.com/gst/fullpage.html?res=9D0DE4DF1030F934A25752C1A9649C8B63>.

away from its initially strong support for Taipei after Taiwan's new president began making controversial statements and undertaking actions designed to affirm the island's political independence from the mainland. Nonetheless, it was not until October 2005 that Secretary Rumsfeld became the first senior U.S. defense official to visit China since the April 2001 EP-3 collision. Even today, the defense communities of the two countries maintain only an episodic dialogue punctuated by mistrust and misunderstanding.⁶⁸⁴

Conclusion

The above survey of the three crises allows for an assessment of policy making in accordance with PNSR's four key questions: 1) how well did the U.S. government develop coherent strategies that effectively integrated its national security resources; 2) could U.S. agencies cooperate to implement these strategies; 3) which variables best explain the strengths and weaknesses of the U.S. government response; and 4) what diplomatic, financial, and other achievements and costs resulted from these successes and failures?

Integrated Strategy Formation

By definition, it is difficult for the U.S. government to formulate coherent, integrated, and long-term strategies for managing unpredictable international crises. Each of the three administrations discussed in this study carefully considered its vision for the evolution of Sino-American security relations. Although they all shared the consensus that China should become more democratic, less repressive, more militarily transparent, and better integrated into global economic and political processes, they disagreed somewhat on how best to achieve these objectives. In addition, they differed in the extent to which the various elements of their strategies were integrated in their development and application.

George H.W. Bush entered office with a well-formulated strategy toward China. The president, who inclined toward a *realpolitik*

684 Richard Weitz, "A Military Hot Line Would Mean Little," *International Herald Tribune*, April 8, 2007, available at <http://www.iht.com/articles/2007/04/08/opinion/edweitz.php>.

perspective of great power relations that focused on the external rather than the internal behavior of countries, was clearly willing to grant Chinese leaders considerable leeway in their domestic policies, at least in the near term pending China's long-term political evolution in a more democratic direction.

The Clinton administration, due to the lower level of presidential interest and other factors, was more divided over its strategy regarding China. Some elements were most concerned with promoting human rights, others with securing commercial advantage, others with curbing nuclear and ballistic missile proliferation, and still others with pursuing defense diplomacy with a reclusive but increasingly powerful PLA. Absent senior White House direction, the U.S. government agencies most responsible for America's China policy often failed to integrate and prioritize these objectives.

The second Bush administration came into office with a strategic framework that saw China as a long-term strategic competitor, but the EP-3 collision occurred too early in the new administration for it to have developed a coherent strategy, with supporting interagency procedures, regarding China or many other important issues. The crisis might have accelerated the development of an integrated strategy that treated China as a potential near-peer competitor if the September 2001 terrorist attacks had not quickly overwhelmed U.S. government planning efforts and directed policy makers' attention away from China and toward countering international terrorism and their potential or perceived state sponsors.

Interagency Collaboration in Policy Implementation

In terms of responding to Tiananmen in the context of his overall strategy toward China, President George H. W. Bush felt compelled to engage Beijing directly by circumventing traditional diplomatic and U.S. government channels. This approach had the advantage of flexibility but meant that, when news of the Scowcroft visit became public, members of Congress felt less reluctance to attack the effort because they had not been briefed beforehand or even after the mission's conclusion. More generally, congressional pressure continually forced the first Bush administration to pursue a harsher policy toward China than the president preferred. In terms of implementing its desired policy toward China, however, the main

obstacle for the first Bush administration was not lack of interagency cooperation, but the dependence of the strategy's effectiveness on Beijing's response. In the end, Chinese policy makers proved unwilling to curtail their internal repression sufficiently to avoid undermining congressional support for the White House's approach of pursuing long-term cooperation with China.

Despite having had several years of in-office experience conducting policies towards China, the Clinton team had problems orchestrating its diplomatic, economic, military, and other foreign policy instruments before and during the embassy bombing crisis. The lack of interagency integration resulted from the incident's absolute unexpectedness and the preoccupation of the White House with winning a war in Kosovo that was proving much more difficult than originally anticipated. The military and intelligence communities proved reluctant to share information about their bombing procedures with their civilian colleagues, let alone the Chinese. As a result, the civilians in the State Department were left assuring the Chinese government that the incident had all been a mistake while acknowledging their limited understanding of why the intelligence failure had occurred.

The second Bush administration eventually achieved its immediate crisis objective of securing the return of the EP-3 crew and subsequently the plane. Nevertheless, the hard-line stance taken by U.S. military leaders, who publicly blamed the Chinese pilot for aggressive flying, was not well integrated with the softer approach of the U.S. State Department. It is unclear whether this divergence resulted from poor policy coordination between an inherently hawkish U.S. defense establishment and an innately dovish diplomatic community, from the relative newness of the administration and its resulting inchoate policy making and policy guidance mechanisms, from the time differential between Hawaii and Washington, or from a deliberate tactic. A more integrated response might have helped secure the release of the crew and aircraft faster. Faced with unanswerable counterfactuals, however, one can acknowledge that the "good cop/bad cop" approach actually adopted, whether consciously or by accident, might have yielded the best results. In any case, congressional pressure for harsh U.S. retaliation on the diplomatic (Olympics) or economic (WTO) fronts if the Chinese failed to return the crew appeared to have

strengthened the administration's bargaining position by making its implicit threats more credible to Beijing.

Explanatory Variables Affecting the U.S. Response

Decision-Making Structures and Processes. By their very nature, international security crises are difficult to anticipate. They therefore often require interagency decision making to employ extra-ordinary, ad hoc processes as well as standard operating procedures. The three China incidents in this study exhibit this admixture. After Tiananmen, the Bush administration worked with the federal agencies to curtail a limited range of diplomatic, economic, and military exchanges with China. The administration also established a formal interagency process for making and implementing decisions. National Security Advisor Scowcroft chaired meetings of the NSC Principals Committee, which for U.S.-China security issues typically included the secretary of state, the secretary of defense, and the director of the Central Intelligence Agency. A NSC Deputies Committee, consisting of the second-ranking officials in each of these agencies, also regularly met. One step below them, a NSC policy coordinating committee, which involved mid-level officials from these agencies, assembled to implement these committees' decisions and nominate issues for higher level consideration.⁶⁸⁵

In practice, however, President Bush relied primarily on his most senior governmental advisors when making key policy decisions toward China after Tiananmen. These individuals included NSC Principals Scowcroft and Baker. Although bypassed with the Scowcroft-Eagleburger missions, Ambassador Lilley, a personal friend of President Bush as well as a trusted China expert, also belonged to this group. These officials would reach decisions and then seek to implement them without necessarily requiring formal advanced or post-decisional meetings of the established NSC committees.⁶⁸⁶ In addition, Bush circumvented formal NSC-led interagency structures when he sent Scowcroft and Eagleburger covertly to Beijing to engage in direct crisis management unencumbered by the bureaucracy. The gesture may have undermined the effectiveness of U.S. diplomatic

685 Garrison, *Making China Policy*, 108.

686 Ibid, 109.

sanctions, but that was presidential intent. Although this centralized system received criticism for being too closed, the fact that it involved key actors who played important roles in both the formal and informal structures—Scowcroft, Baker, and Bush himself—helped keep the two processes in sync.

After the Belgrade bombing, the agencies employed formal diplomatic channels to apologize to the Chinese. They also engaged in an atypical, but still orderly, comprehensive military intelligence review to identify and correct the flaws made apparent in the bombing process. The priority that President Clinton and other senior U.S. government officials placed on winning the war in Kosovo perhaps disinclined them from attempting to disrupt formal U.S. government decision making structures and processes by substituting ad hoc procedures. That said, for much of the period leading up to the bombing incident, the administration had experienced problems integrating the various components of its comprehensive engagement toward China. Diverse executive branch agencies readily engaged with the Chinese government, but often on their own terms in pursuit of distinct agendas.

The influence of the State Department, formally charged with the lead role in shaping and conducting American foreign policy, was weakened by the often sharp differences among its diverse regional and functional bureaus. Given their institutional mandates, one bureau would emphasize human rights, another commercial considerations, another nonproliferation objections, and so on. Neither the State Department leadership nor the White House was able to establish a hierarchy or balance among these often competing objectives, leading the bureaus to conduct parallel strategies that were poorly integrated with those of other agencies within or outside the department. By the time of the embassy bombing in 1999, Chinese officials had become distrustful of Clinton administration statements and actions, since they were often contradicted by at least one U.S. government agency seemingly pursuing a different course.

Following the EP-3 collision, the U.S. military heavily influenced the initial U.S. government response since one of its planes was directly involved in the incident and because much of official Washington was not yet awake. PACOM queried the Chinese military about the

EP-3's status, publicly blamed the Chinese pilot for the collision, and demanded immediate access to the crew as well as a rapid return of the plane. As noted, Chinese policy makers appeared to have reacted negatively to the seeming insensitivity of this U.S. military response (though some of this professed outrage may have been designed to enhance Beijing's bargaining leverage). After the other agencies became engaged, however, PACOM and the Pentagon adopted a much lower profile and, as directed by the White House, allowed Secretary Powell and President Bush to manage the public response. The two men's reinforcing messages combined expressions of public regret with warnings that the lingering crisis could damage bilateral relations.

The three crises illustrate the importance of presidential leadership in dealing with China. Only the president has the authority to direct the complex and often divided U.S. national security bureaucracy to identify and implement a coherent strategy for resolving such important unforeseen contingencies. George H. W. Bush immediately took charge of the crisis response after Tiananmen, making clear that he wanted to keep channels of communication open to the Chinese leadership despite American concerns regarding the harshness of the Chinese military crackdown. As a result, even though the Bush team was caught off guard by the crisis, its members were able to pursue a coherent and consistent strategy towards China—both in the sense that Bush adhered to the same strategy of cooperative engagement throughout his term and that the major national security actors in his administration understood the president's priorities.

In contrast, Clinton was initially preoccupied with Kosovo and other matters, leaving the U.S. agencies uncertain how to respond to Chinese outrage besides repeatedly affirming that the bombing was an accident and that the U.S. government wanted to maintain good relations with China. The president chose not to challenge the military's reluctance to inform the Chinese how the defense community was selecting the targets to attack in Serbia, presumably in part because some suspected the Chinese were supporting the Serbs by providing them with their own intelligence data about NATO operations.

The response of the second Bush administration also may have suffered from the initial tactic of allowing the agencies to assume the lead role in managing the U.S. response. The Defense and State

Departments seemed to have differed over the appropriate reaction. Clearer presidential and NSC direction might have lessened this divergence, which appears not to have been a deliberate strategy.

Organizational Cultures. In terms of integrating the U.S. government response to a particular immediate crisis, it is hard to generalize about differences in culture, mindsets, or other organizational characteristics of the U.S. civilian and military agencies. To the extent they exist, these divergences would more clearly manifest themselves over a longer time period, such as in influencing perceptions about the causes of international tensions or about the importance of military power in shaping foreign government perceptions and policies. In their near-term response to an international crisis, both civilian and military reactions appear heavily influenced by assessments of the degree of risk involved in pursuing various courses of action. Typically, policy makers balance fears of appearing weak with concerns about managing pressures for escalation. In addition, individuals tend to differ, regardless of their institutional affiliation, for reasons of ideology, their understanding of history, and other considerations regarding a desired end-state for a crisis and how best to achieve it.

During the crises examined herein, the senior civilian and military leaders of the U.S. defense community did sometimes articulate distinct preferences from their non-DOD colleagues, but these do not appear to have reflected their unique cultural values and institutional interests. After Tiananmen, the civilian heads of DOD recommended suspending defense cooperation with China on the grounds that the PLA was directly responsible for the large number of civilian casualties. After the Belgrade bombing, U.S. military representatives were reluctant to share sensitive information regarding the method for selecting bombing targets. They also declined to send a uniformed officer with Undersecretary Pickering when he issued the formal American explanation and apology to Beijing. The CIA also proved reticent to reveal its internal processes to other U.S. government agencies let alone the Chinese, and some members of Congress objected to the Pickering mission as inappropriately submissive.

In the case of the EP-3 collision, accidents of timing and other fortuitous variables resulted in the U.S. military, namely PACOM,

exerting unusually great initial influence over the U.S. response. Admiral Blair and other DOD leaders, both civilian and military, proved less diplomatic in their approach toward the Chinese than their State Department colleagues. Their demand for the immediate return of the crew and plane, as well as their public statements blaming the Chinese military for the collision, though reflecting organizational priorities, was not well-received by the Chinese government. It was not until the White House directed the Pentagon to temper its public statements and recall the additional warships it had deployed in China's vicinity, and after Bush and Powell started making statements that the Chinese found sufficiently apologetic, that Beijing agreed to release the crew and plane.

Capabilities and Resources. Both Bush administrations suffered the misfortune of experiencing major crises with China early in their terms of office, before all their senior staff had been appointed and their interagency policy making and implementation processes had become established. In the case of the first Bush administration, the president's own knowledge and interest in China helped compensate for this problem. George H.W. Bush felt comfortable making policy himself and then instructed his senior aides (typically Scowcroft) to implement it. In the case of the George W. Bush administration, the transition problem was more acute. Not only did the new president lack much experience in dealing with China or other national security issues, but the outgoing and incoming teams belonged to different political parties, which meant that the new administration often had to rely on some Clinton holdovers to implement their policies.

In this regard, the U.S. government is also unique in the extent to which it relies on political appointees rather than career civil servants to occupy important national security positions. Even second-tier or third-tier officials are often political appointees who serve as agency deputies and representatives on working-level interagency processes. One reason for this phenomenon is that new administrations, particularly if they belong to a different political party than their predecessors, frequently distrust the political loyalty of legacy career civil servants, who dutifully implemented the policies of the previous president. A further consideration is a concern to ensure that the U.S. government remains open to novel perspectives and skills that can be imported into the bureaucracy through the appointment

of a limited number of outside policy experts. Another cause for this large bureaucratic stratum of political appointees is that these second- and third-level individuals play a vital role in formulating and implementing U.S. government policies. They prepare and frame options for higher level decision makers. They also regularly resolve issues not considered sufficiently important or divisive for elevation to department heads and other principals. The agency deputies as well as the third-tier assistant secretaries and office directors also assume a lead role in ensuring the implementation of the president's policy preferences. The important policy functions of these actors typically lead White House personnel managers to want to ensure that "their" people occupy these posts.

The time required to staff the senior levels of the U.S. government can prove problematic when a major national security crisis occurs early in the life of a new administration. Presidents select their main national security cabinet heads, who then must secure Senate confirmation. Subsequently, these individuals, in consultation with the White House, Congress, and other stakeholders, select the next level of deputies and agency heads. It can take over a year to fill the lowest level of political appointees, and even longer before they can gain sufficient experience in their new jobs to function effectively. By this time, some of their superiors may have left office, which requires another lengthy personnel selection process. This cascading effect further exacerbates the already protracted process of security clearances and financial vetting involved in staffing national security positions. A related problem is that, when transitions occur between administrations, the displaced incumbent political appointees depart with considerable institutional knowledge. The Clinton administration, moreover, lacked the details of many Bush administration decisions because the relevant records were placed in archives pending storage at the Bush Presidential Library.⁶⁸⁷ The lack of institutional knowledge is aggravated by the fact that, in the case of some very sensitive subjects (e.g., negotiations with foreign countries like China), the written documentation of the details and rationale for past decision making may be sparse.

687 Suettinger, *Beyond Tiananmen*, 159.

One of the advantages of the current structure of the National Security Council is that the position of NSC advisor is exempt from Senate confirmation (though the incumbent must still undergo security and other reviews). The ability of a new president to appoint a national security advisor immediately helps ensure that the administration has a degree of institutional capacity even during the early transition period. Since the advisor is so often associated with the president, moreover, foreign governments often treat him or her as a presidential envoy empowered to communicate and negotiate on the president's behalf. Yet, since the NSC staff consists primarily of a limited number of political appointees and civil servants on temporary rotation appointments, it does not possess the institutional depth and resources found in more traditional government departments. Although NSC staff members can engage in policy oversight, they lack the numbers, substantive expertise, and legal authority to implement policies.

During the three U.S.-China crises under review, the existing staff and other resources at the disposal of the regular U.S. civilian and military agencies proved adequate for managing these incidents. In any case, the short duration of these crises would have prevented the agencies from mobilizing additional resources, such as by appealing for more funds from Congress. The American government's reaction to Tiananmen involved basically curtailing rather than expanding interactions with China. In the case of the EP-3 collision, the U.S. government had sufficient resources to retrieve the plane and crew through both diplomatic negotiations or (though this was never considered as a serious option) by using military force.

The resource issue was most important in the embassy bombing crisis, which occurred in the midst of a demanding military campaign that was severely taxing U.S. military and intelligence resources. According to Senator Richard Shelby, then Chairman of the Senate Intelligence Committee, one reason for the faulty target selection and out-of-date databases was that the U.S. intelligence community had received insufficient funding in previous years, resulting in "ask[ing] too few people to do too much" and "stretch[ing] our people to the

breaking point” even before the added burden of the war arose.⁶⁸⁸ The Executive Office of the President, which included the NSC staff, suffered from Clinton’s decision to implement his campaign commitment to reduce its size by 25%. Such downsizing diminished the White House’s ability to coordinate and oversee implementation of U.S. national security policy. In another respect, however, the relative abundance of U.S. national security resources compared with other countries proved counterproductive. The Chinese could not believe that the U.S. military and intelligence communities—with their vast resources and proven effectiveness in the recent Desert Storm operation—could bomb China’s embassy in Belgrade by mistake. From their perspective, it had to have been a deliberate attack.⁶⁸⁹

More generally, having additional Chinese specialists in the U.S. government might have helped decisions makers understand developments related to China better, during the 1989-2001 period but only if those forming and implementing policies actually listened to the experts. In addition, understanding China-related developments has proven notoriously difficult during the past few decades, for U.S. government and nongovernmental analysts alike. Few observers anticipated the political chaos before Tiananmen, the difficulties in determining Chinese proliferation activities (underscored by the *Yin He* embarrassment), or the sustained growth of China’s economic and military strength during the past two decades.

Issues relating to executive-legislative relations were most acute after Tiananmen. Initial conceptual differences over how best to respond to the Chinese military crackdown soon escalated into an intense struggle between the legislative and executive branches over the appropriate separation of powers. The president and his advisors fought vigorously against congressional attempts to force

688 Cited in John Diamond, “Officials Tell How Bad Map Led to Chinese Embassy Bombing,” Associated Press, May 12, 1999, available at http://www.polkonline.com/stories/051299/nat_officails.shtml.

689 Susan L. Shirk, *China: Fragile Superpower: How China’s Internal Politics Could Derail its Peaceful Rise* (New York: Oxford University Press, 2007), 212–218. See also the comments of the Chinese Ambassador to the United States, Li Zhaoxing, on PBS Newshour, May 10, 1999, available at http://www.pbs.org/newshour/bb/europe/jan-june99/li_5-10.html.

the executive branch to impose a broader range of sanctions than Bush deemed wise. Ideological antagonism toward China transcended party differences, except in the case of those unlucky Republican congressional leaders who struggled to secure enough support to sustain Bush's vetoes of various sanction proposals.

Congressional intervention after the embassy bombing and the EP-3 collision was more constrained. Although some members denounced the Chinese government for inflaming anti-American sentiment after the former incident, and for initially refusing to release the crew in the collision case, they generally allowed the executive branch to negotiate a solution to the crises directly with their Chinese counterparts. The Clinton administration's ability to deal with China was however hampered by congressional limitations on military exchanges, imposed following allegations that the Chinese government was seeking to secure defense secrets through these interactions as well as other means of intelligence gathering. In contrast, congressional outrage at the initial Chinese failure to return the EP-3 crew appears to have enhanced the bargaining position of the second Bush administration by bolstering the credibility of their less explicit threats of retaliation.

Legal issues also arose in all three cases. As already noted, typical delays in the appointment process, partly due to the need to comply with various legal and constitutional requirements, deprived the two Bush administrations of several intended executive branch officials who had yet to secure Senate confirmation. As long as it takes months to appoint, confirm, and swear in department heads and their key deputies, the authority of unconfirmed government officials to act during crises occurring early in a presidential term will remain uncertain. Although the timing of the two China crises resulted from factors unrelated to the U.S. presidential transitions, adversaries might seek to exploit these temporal seams in the future.

After Tiananmen, moreover, advocates of harder and softer U.S. approaches toward China differed over the extent to which they believed the traditional respect for state sovereignty in international law needed to be tempered by the post-World War II emphasis on protecting human rights. Chinese officials contested sharply the legitimacy of the U.S./NATO humanitarian intervention in Kosovo, which exacerbated resolution of the subsequent embassy bombing

crisis. Whereas the Chinese government insisted that any use of force in international politics required the explicit approval of the UN Security Council, members of the Clinton administration considered the need to end alleged Serbian genocide in Kosovo as a sufficient justification to act without UNSC sanction. American and Chinese lawyers also debated how much money the U.S. government needed to provide in terms of compensation for the destroyed embassy, minus the costs to the United States from the damage inflicted by the protesters on the American diplomatic facilities in China.

The issue of government-to-government compensation also arose in the case of the EP-3 collision, with the American diplomats offering far less money than the Chinese demanded to repatriate the crew and plane. In addition, each side accused the other of violating the provisions of the vaguely worded 1998 Sino-American Military Maritime Safety Agreement.⁶⁹⁰ But the main legal issue here was the legality of the U.S. surveillance flights in the first place. Chinese and American officials disagreed over whether the U.S. military could conduct surveillance flights within China's EEZ and about whether Chinese authorities had the right to inspect the plane. Although Admiral Blair and other U.S. policy makers justified the flight as a routine surveillance operation in international waters, the Chinese government denounced what one spokesperson termed "a series of actions by the US side, which violated international law and the internal laws of our country."⁶⁹¹ The American government seemed to have been able to mobilize considerable legal resources in developing and defending its positions, but without much effect on the Chinese negotiators. The Chinese press cited a diverse range of international

690 Andrew Sven Erickson, "Why America and China Need A New Military Maritime Agreement," The National Committee on United States-China Relations, 2002, available at http://www.ncuscr.org/Essay_Contest/erickson.htm.

691 According to the Chinese Foreign Ministry, "the United Nations Convention on the Law of the Sea stipulates that any flight over the EEZ of another nation must not violate the general rules of the international law, nor is it allowed to infringe on the national sovereignty and territorial integrity of this nation or pose a threat to its national security, peace and order" ("Efforts Needed From Both Sides to Solve the Collision Incident," Xinhua, April 20, 2001, available at <http://www.china.org.cn/english/11506.htm>).

agreements, U.S. laws, and expert interpretations to challenge American government legal claims.⁶⁹² In practice, the dispute between the American and Chinese governments involved sensitive matters of national sovereignty and national security that typically trump the specific international legal principles at issue.⁶⁹³

The three episodes under review do show clear instances of intelligence failures. In June 1989, the Bush administration, like most of the international community including the Chinese government, appeared completely surprised by the level of mass protest and subsequent violence that occurred in Beijing. Still, it is unlikely that even perfect foreknowledge could have enabled the United States to manage the crisis much more effectively. The diplomatic, economic, and military tools at the disposal of the U.S. government were simply inadequate for inducing Chinese officials to negotiate with the student demonstrators once communist leaders came to fear they might lose power in a popular revolution.

The intelligence failures during the Belgrade bombing were more serious since the CIA was responsible for selecting the target. Notwithstanding the pressure from the Pentagon to find additional targets to help sustain the flagging bombing campaign, the data collection and processing techniques then employed by the CIA and its sister agencies clearly proved inadequate, as subsequent U.S. investigators acknowledged.

Finally, the intelligence community appears to have unduly downplayed Chinese warnings before the EP-3 collision about U.S. military encroachments along China's periphery. One positive feature about information management during this crisis was that PACOM had developed extensive communication capabilities in order to manage its immense area of responsibility, the largest of any of the geographic combatant commands. This network allowed for rapid

692 See for example "No Legal Precedent for US Spy Plane Case," Agencies, April 4, 2001, available at <http://www.china.org.cn/english/10168.htm>; and "US Plane Grossly Violated International Law: Signed Article," Xinhua, April 4, 2001, available at <http://www.china.org.cn/english/10173.htm>.

693 Kan et al, *China-U.S. Aircraft Collision Incident of April 2001*, 19–21, available at <http://www.fas.org/sgp/crs/row/RL30946.pdf>.

communication between Ambassador Prueher and Secretary of State Powell during the negotiations over the content of the U.S. apology letter.⁶⁹⁴ Of course, this situation provides another example of how the exponential improvement in communications technologies is allowing more decisions in Washington and decreasing the autonomy of the embassy teams and overseas military commanders, with mixed results. While the people in the field typically have superior knowledge of local conditions, they may not appreciate the relative importance of their concerns in Washington, where policy makers often need to balance a wider range of competing priorities.

In the case of major national security crises, the most constraining resource appears to be leadership time. Although both Bush administrations were unfortunate in that the crises occurred soon after they assumed office, they did benefit from the incidents occurring when they were not preoccupied with another issue, allowing them to make managing the crisis their top priority. In contrast, the unlucky Clinton team found themselves engaged in a most unexpected and most unwelcome China crisis at the same time they were trying to win a difficult war without rupturing relations with Russia or often carping NATO allies. Although concerned about the Chinese reaction, the Clinton team continued to prioritize winning the immediate battle with Serbia while hoping that the Chinese leadership would yell and scream but not do anything rash.

Costs and Benefits

Sino-American relations deteriorated substantially following each crisis. After Tiananmen, the two governments suspended most formal ties. Whereas during the 1980s, both countries viewed themselves as de facto allies against Soviet expansionism, during the 1990s, Chinese officials openly debated whether Americans were seeking to use human rights and democracy promotion issues to overthrow their government or contain China. Both the Belgrade bombing and the EP-3 collision reinforced such suspicions despite American protestations that these incidents were entirely accidental. Many in Washington, especially in Congress but also in the executive branch, began to view China as an authoritarian government that had yet

694 Interviews with former U.S. government policy participants.

to prove itself a responsible international stakeholder. Partly due to the legacy of these incidents, the two countries' national security communities view each other with mistrust to this day.

The main benefit the United States gained from its handling of these crises with China was avoiding potential costs. In this case, the precise losses are hard to specify since they require at least an implicit assessment of counterfactuals. Each Chinese-American crisis worsened the relationship somewhat, but none of the crises resulted in a war between the two countries or even a sustained rupture in relations. Among other factors, the expanding commercial ties between the United States and the PRC have given both countries a considerable stake in sustaining tolerably good relations. The Sino-American crises that have occurred since China decided to open its economy to foreign engagement have never reached a level of severity that would jeopardize these relations.

Furthermore, if there had been no Tiananmen crackdown, Belgrade bombing, or EP-3 collision, it is not clear how much better the Sino-American security relationship would have been. Throughout 1989–2001, each side remained distrustful of the other's objectives and behavior. Whereas Chinese leaders suspected that the U.S. administrations ultimately sought to subvert Chinese communism, many American policy makers saw the PRC as the main emerging great power adversary of the United States now that the Soviet Union had imploded and Yeltsin's Russia appeared unable and unwilling to mount a serious challenge to American global primacy.

Ultimately, even if these bilateral security crises had been managed more effectively, a combination of factors probably would have prevented the realization of a significantly improved Chinese-American security relationship during the 1989–2001 period. The Chinese leadership, while no longer adhering to fanatical versions of Maoism, nevertheless remained committed to sustaining a one-party authoritarian government that readily repressed domestic opponents at home and vigorously contested perceived foreign encroachments against China's sovereignty and security. If anything, the democratic wave that had engulfed much of the former Soviet bloc reinforced Beijing's determination to crush any domestic challenge that might have weakened government authority. The vigorous suppression since

the early 1990s of the Falun Gong, a nonviolent spiritual movement, and the strong-armed tactics Beijing often pursues towards Tibet, Taiwan, and Xingjian, demonstrate the sensitivity of the Chinese leadership to potential ideological, political, and other challenges. In addition, the government's reliance on Chinese nationalism to compensate for the decline in legitimacy following the de facto repudiation of Marxism-Leninism has also made China a more difficult partner with which to manage bilateral crises. The growth in the relative military power of both China and the United States since 1989 has also naturally led their national security communities to view the other more warily.

Unfortunately, if the nature of the Chinese political system limits the possible benefits from successfully managing Sino-American crises, the obverse is not necessarily also true. Poorly managed, a Chinese-American crisis could potentially escalate into a nuclear exchange between the two countries, which seem likely to possess the two strongest militaries operating in the Asia Pacific region for some time to come. This consideration alone warrants sustained efforts to enhance the U.S. government's ability to manage future China crises.

