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Policy Making

12th Edition

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Case Studies in

Policy Making

12th Edition

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Preface

Since the publication of the 11th edition of this casebook, the George W. Bush administration has given way to the presidency of Barack Obama. This required us not only to update many of the cases but to introduce the theme of continuity and change in U.S. foreign policy, by examining where and when the new administration has chosen to break with or alter the policies of its predecessors.

There are several cases that continue to resonate with students at the Naval War College and that have consistently appeared in previous iterations of *Case Studies in Policy Making*, including "We Have Some Planes" (the 9/11 case), "The 1973 Arab-Israeli War," and the Kosovo case. However, the 12th edition of the casebook has a number of new additions, reflecting ongoing changes in the senior-level Policy Making and Planning (PMP) course and the revamped National Security Policy Analysis (NSPA) course for intermediate students. Given increased interest in having case-study examples of themes addressed in both PMP and NSPA, we have introduced two new cases dealing with defense procurement issues (on the MRAP and the search for a replacement tanker for the Air Force); one on the tug-of-war between Congress and the executive branch (by focusing on Iran sanctions policy); and the "Ayatollah and the Ambassador" case, on the influence of religion in post-Saddam Iraqi politics. New cases have been prepared on U.S. policy toward Darfur, Guantanamo Bay, and Iran. Case studies on Russia, Cuba, and Colombia (as well as on landmine policy) have been significantly revised and updated to take into account developments through to spring 2010. The case on Hurricane Katrina has been expanded to take into account how the lessons learned in New Orleans in 2005 were applied when Hurricane Gustav struck in late summer 2008.

We do not pretend that these case studies can encapsulate the incredible complexity of the issues being addressed. However, they do provide students with an introduction to the influences on the policy-making process and enable the faculty to illustrate abstract concepts with reference to real-world events.

The 12th edition of this book could not have happened without the dedication and hard work of many individuals who are dedicated to our national security. We would like to acknowledge Dr. Joan Johnson-Freese, Department Chair, for her guidance and stewardship of the National Security Decision Making Department, as well as Professors Al Shimkus and Stephen Knott, the outgoing and incoming course directors for the Policy Making and Process subcourse. We would also like to thank Ms. Peggy Jones, Academic Coordinator for NSDM, and Ms. Elizabeth Davis, Ms. Lori Melissa Cameron, Mr. John Lanzieri, Mr. Ken DeRouin, Mr. Albert Fassbender, and Ms. Shannon Cole of the NWC Visual Communications Division for their technical and editorial support, and Ms. Kerri Cole for the cover design.

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Introduction: Change and Continuity in U.S. Foreign Policy

NIKOLAS K. GVOSDEV

No decision maker sets policy in a vacuum. Rarely does a policy maker have a blank check with which to operate. Often, a decision is made within a complex environment where the number and type of options available are constrained by a multitude of factors. As Donald K. Hansen noted in the preface to the 10th edition of this casebook: "The decision maker at the national strategic level operates in a very complex environment where the constraints of international laws, rules, norms, and differing ideologies exist. If those elements are not difficult enough to contend with, the decision maker is further constrained by a deeply entrenched bureaucracy, influential personalities, the media, Congress, and his own cognitive limitations."

The following case studies provide examples of how a policy maker is constrained by the larger policy environment and by the choice of tools at his or her disposal. Translating a foreign policy vision into concrete policy actions can prove to be very difficult. David Brooks argues that decision makers "have general goals, but the way ahead is pathless and everything is shrouded by uncertainty."[1] Setting priorities and distinguishing between optimal and satisfactory outcomes are often very challenging, and how decision makers cope with these issues is illustrated by the cases that have been chosen.

With a number of the cases, there has been an opportunity to update them from the previous, 11th edition (which appeared in 2008) with developments that occurred in the first year of the Obama administration. As a result, the reader has a chance to evaluate the degree of continuity and change between presidential administrations. How significant has been the break between the George W. Bush and Barack Obama administrations? David Rothkopf, a former Clinton administration official, argues that the Obama team "has an approach towards foreign policy which is very different from the Bush administration, very oriented towards engagement."[2] Christian Brose, a former speechwriter for Secretary of State Condoleezza Rice (and now a staff member for Senator John McCain on the Senate Armed Services Committee), argues that Obama has largely continued many of the second-term policies of George Bush. There might be some changes, but otherwise, "Obama's foreign policy likely won't depart radically from Bush's."[3]

How much do presidents get to change what has been bequeathed to them by their predecessors? After a review of Bush administration policy, President Obama announced in September 2009 that he was canceling the ballistic-missile defense plan for Europe that had

been proposed and set in motion by the George W. Bush administration. The *New York Times* called the decision "one of the biggest national security reversals of his young presidency."[4] Instead, the administration promised to deploy interceptors to cope with shorter-range missiles on ships at sea, and said it would revisit the question of a missile defense shield for Europe if the threat changed. Whereas the countries of "new Europe" were very important for the Bush administration—especially given their support of the Iraq war—central and eastern Europe is less important to President Obama, who defines himself as "America's first Pacific president" and promised greater U.S. engagement in the Asia-Pacific region.[5] The shift in attention was noticeable enough for a group of regional leaders to address an "Open Letter" to Obama, noting "that Central and Eastern European countries are no longer at the heart of American foreign policy."[6] Some also detect a conscious shift in U.S. policy toward China. After initial attempts to engage with the leadership of the People's Republic, the Obama administration, by the close of 2009 and the beginning of 2010, took stands on a number of issues (Taiwan, Iran, Internet censorship, and trade) that signaled a tougher line. Administration officials claim these steps were taken

> to avoid assumptions that President Obama would be deferential to China over American security concerns and existing agreements.
>
> "This was a case of making sure that there was no misunderstanding that we will act in our own national security interests," one senior administration official said. A second Obama administration official, also speaking on the condition of anonymity because of the sensitivity of the issue, said pointedly: "Unlike the previous administration, we did not wait until the end of our administration to go ahead with the arms sales to Taiwan. We did it early."
>
> But larger questions remain about where the Obama administration is heading on China policy, and whether the new toughness signals a fundamentally new direction. . . .[7]

Changing the tone or focus of policy and tinkering at the margins, however, is one thing; but can new administrations reverse wholescale the major decisions taken by previous presidents? Brooks argues that one of the "myths" about the power of any president to institute change is that "we can begin the world anew. In fact, all problems and policies have already been worked by a thousand hands and the clay is mostly dry. Presidents are compelled to work with the material they have before them."[8]

Sometimes, a president and his administration lock in a decision in such a way that the costs are prohibitively high for a successor to make significant changes. The Bush administration, for instance, created a political consensus around how the Iraq war would be wound down: a gradual withdrawal of American forces from Iraqi cities, retention of a smaller force (estimated to be around 50,000 men) to assist with training and security until its withdrawal in late 2011, and the possibility of a "residual force" remaining in Iraq after that point. This was enshrined in the strategic framework document that accompanied the status of forces agreement negotiated with Iraq in 2008.

Candidate Barack Obama ran on a platform of immediate U.S. withdrawal from Iraq. At a campaign stop in February 2008, he declared, "I will bring this [Iraq] war to a close. In 2009, I will bring our troops home." President Obama, in contrast, has largely retained the Bush plan in place. Instead of pulling troops out immediately, he announced a strategy at Camp Lejeune in February 2009 that calls for the U.S. "combat mission" in Iraq to end by August 31, 2010, and with 50,000 troops to remain in Iraq to engage in training and counterterrorism missions until the end of 2011. His defense secretary, Robert Gates (himself a holdover from the Bush administration), again raised the possibility that a "residual force" will remain in Iraq, for years if necessary, if requested by the government in Baghdad.[9] A far cry from what was promised on the campaign trail!

This highlights an observation by Andrew Stigler, a professor in the National Security Decision Making Department of the Naval War College: "Inertia is often a governing force." Bureaucracies are locked in to policies that have become standard operating procedures; presidents and their advisors discover that making significant policy changes disturbs important stakeholders; any new administration can only pay attention to a limited number of issues, often trading the ability to dramatically alter a few key programs in return for guaranteeing continuity on a whole host of issues that are of lesser importance. Finally, there does exist in Washington what is usually termed a "bipartisan foreign policy consensus" on some issues, such as a strong commitment to the NATO alliance, the unwillingness to see the Islamic Republic of Iran acquire nuclear weapons, and so on.

When one looks specifically at the transition from the Bush to the Obama administration, there are other factors to consider as well. The retention of Defense Secretary Robert Gates and the selection of retired general Jim Jones to be national security advisor ensured that there would be a high degree of continuity in national security policy rather than major reversals, as some of Obama's supporters grouped in the "progressive/liberal" wing of the Democratic Party had hoped. Moreover, Obama made many appointments from the so-called centrist wing of the Democratic Party, starting with Senator Hillary Clinton as secretary of state and including a number of former Clinton administration officials, who were less opposed to the spirit of some of the policies of the Bush administration and more critical of how they were executed in practice.[10] On the other hand, Gates has demonstrated that he is not interested in fighting any sort of "rear guard" action to retain all Bush-era policies. As Peter Baker and Thom Shanker concluded, "Gates has emerged as the man in the middle between policies of the past he once championed and the revisions and reversals he is now carrying out."[11]

All of this leads foreign policy analyst and former dean of the Elliott School of International Affairs at George Washington University Harry Harding to conclude: "In short, the Obama Administration's approach to foreign policy involves a blend of change and continuity. On balance, however, the degree of continuity is noteworthy—and comes [as] a surprise (and sometimes a disappointment) [to those] who expected more change, and a vindication to those who predicted that much of the Bush Administration's foreign policy [would] be proven to be both necessary and effective."[12]

Given the complexities of U.S. foreign and defense policies, some have compared policy making to steering an aircraft carrier: sudden turns are out of the question, and one gets to a final destination through gradual course adjustments. If the Obama administration has retained a number of Bush-era policies, will slight adjustments over the lifetime of his presidency produce, by 2012 or 2016, what appear to be major course corrections? Or will Obama's policies largely mirror those of his predecessor (with differences in tone and emphasis)? One year into the new administration, we can see the faint outlines but do not yet have a clear final answer to provide.

Notes

1. David Brooks, "The Analytic Mode," *New York Times*, 3 December 2009, available at http://www.nytimes.com/2009/12/04/opinion/04brooks.html?_r=1&em.
2. Quoted in Peter Baker, "On Foreign Policy, Obama Shifts, but Only a Bit," *New York Times*, 16 April 2009, available at http://www.nytimes.com/2009/04/17/us/politics/16web-baker.html.
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11. Peter Baker and Thom Shanker, "A Pragmatist, Gates Reshapes Past Policies He Backed," *New York Times*, 22 September 2009, A1, available at http://www.nytimes.com/2009/09/22/us/politics/22gates.html.
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Understanding the Policy-Making Process: A Guide to Case Analysis

RICHARD J. NORTON

Few decisions can be more difficult for a U.S. president than to commit military forces to potential combat situations. The stakes in such decisions are always high. Loss of U.S. and other lives, the expenditure of vast amounts of resources, and damage to national prestige are among the possible negative outcomes of such decisions. Other decisions made at this level, such as the selection of a particular policy, commitment to procurement of certain military capabilities and weapons systems, and the signing of treaties, involve stakes that are almost as great as those involving the use of force.

There is a widespread tendency to believe that decisions of this nature are derived from a coolly analytical process, in which the costs of particular courses of actions are weighed against anticipated gains to national security. Indeed, many of the formal decision-making mechanisms in the federal government were designed to facilitate and support this sort of cost-benefits driven decision making. For example the structure of the National Security Council, with its hierarchical layers of increasingly senior interagency working groups, was designed to ensure the president is presented with well-vetted alternative courses of action. Since multiple agencies are deeply involved in this process, it was believed organizational biases would be eliminated in the formulation of potential decision choices.

But scholars who have studied national security decision making have learned that such calculated decisions are more the ideal than reality.[1] Some analysts believe decisions predominantly are reached to protect the interests (since they do not always coincide) of the great established government bureaucracies, such as the departments of Defense, State, and Treasury. Others see the decision-making process dominated by powerful individuals such as Henry Kissinger, Zbigniew Brzezinski, James Baker, Madeleine Albright, Colin Powell, Karl Rove, and now Robert Gates and Hillary Clinton—all of whom have enjoyed the ear of one or more presidents. Still other scholars argue national security decisions cannot be understood without understanding the personal beliefs, values, norms, and biases of the senior decision maker. It has even been argued that some decisions are forced on the U.S. government as the result of irresistible inputs generated either domestically or internationally. So, the student of public policy must have an understanding of the organizational, political, and behavioral influences on such decisions as well as knowledge of the formal processes through which national security decisions are made.

As Alexander George concluded:

> Scholars specializing in international relations and policy specialists in the government face together the challenging task of improving the knowledge base required for more effective foreign policy. This objective will be furthered by a better understanding of the gap between the theory and practice of foreign policy.[2]

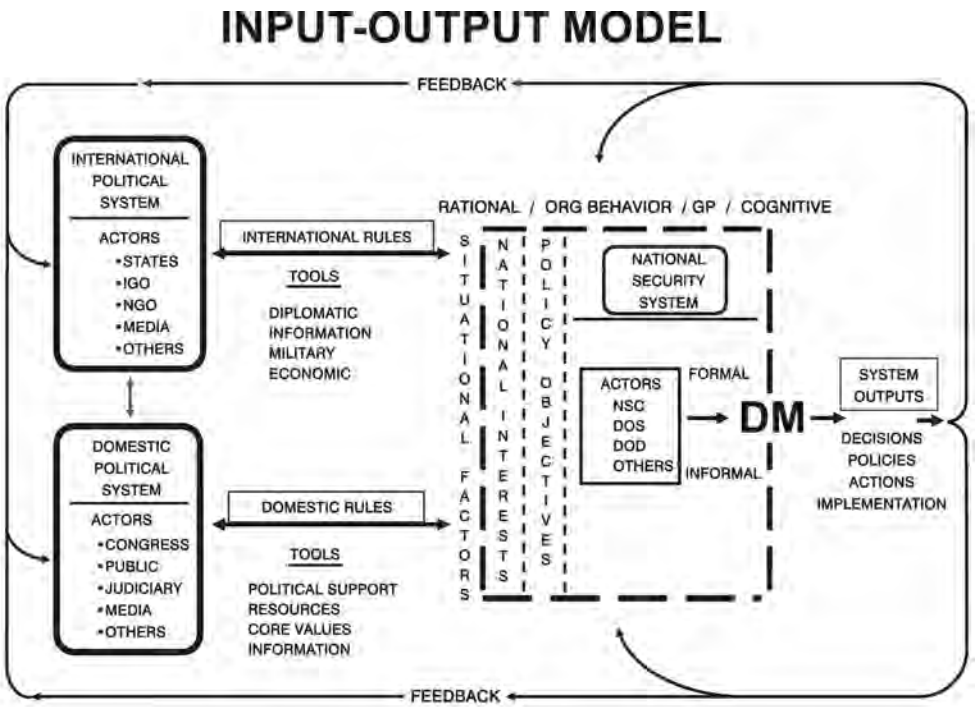
At the Naval War College, the case study is used as the principal vehicle to study national security decision making, especially within the Policy Making and Process (PMP) course.

THE INPUT-OUTPUT MODEL

In order to capture a "snapshot" of the policy process, the primary analytical tool used is the Input-Output Model (I/O model). The origins of the I/O model can be traced to the work of David Easton.[3] Easton, a noted political scientist and scholar, is best known for his pioneering work in applying systems theory to political science. In 1965, he developed a basic model depicting how a set of demands on the political system resulted in decisions, which, through a feedback loop, led to more demands. The current model in use by the National Security Decision Making department at the Naval War College is U.S.-centric and oriented to analyzing decisions made at the highest levels of the U.S. government, but it can, with only minor modifications, be used for any decision-making process in any organization.

The I/O model is divided into three major components: the international political system (IPS), the domestic political system (DPS), and the national security system (NSS). Each

Figure 1: The Input-Output Model



of these systems provides inputs to, and receives inputs from, the other systems. Although the line diagram used to denote these systems might imply impermeability, actors can often belong to more than one system. For example, the chief executive officer of a large U.S. company could be an actor in both the domestic and international political systems.

The international political system is primarily composed of actors outside the domestic political and economic arena, such as states, nations, intergovernmental organizations, multinational corporations, and nongovernmental actors with cross-border activities or membership. The last category is extremely diverse, encompassing everything from armed resistance groups to religious organizations to multinational corporations. The state is given primacy of place in this system because, although others act within and exercise influence upon the IPS, states remain this system's most powerful actors. The inputs to the decision-making process from the IPS cover a vast spectrum of discrete actions, but generally fall within the broad categories listed. The term "international rules" refers to international laws, customs, and international agreements that are taken into account when reaching a national security decision. Examples could include restrictions on violating another state's territorial integrity, the need to follow specific treaty provisions, and prohibitions on a variety of military actions. International trends, such as conflicting norms, globalization, and emerging technology, also play a critical role.

The domestic political system is no less complex than the IPS, especially in a participatory democracy where public opinion and core societal values may form significant inputs to members of the national security system.[4] Interest groups form another rich source of inputs, as do the legislative and, to a lesser degree, the judicial branches of government. The news media are represented as both a domestic actor as well as an international one, since most countries have a relatively identifiable and distinct national press and video media. Some of the key inputs to the decision maker from the DPS include resources (e.g., financial and political support), missions and requirements, as well as restraints on the activities of organizations belonging to the national security system. Other inputs include information and intelligence from sources as disparate as lobbyists and congressional staff members returning from a fact-finding mission.

The national security system lies at the heart of the U.S. decision-making process. It is here where various models of decision making are active. Broadly speaking, membership in the NSS is composed of the individuals and organizations that work for the decision maker. However, this is not to imply that every member of the NSS participates in the decision-making process. Nor do members and organizations that are involved always play an equal role.

The following are among the central tasks of the NSS:

- Obtaining resources from the IPS and DPS.
- Once obtained, allocating those resources.
- Planning and deciding U.S. national policies.

- Organizing and directing agents to achieve those policies.
- Motivating, evaluating, modifying, and changing both agents and policies as implementation and feedback are processed.[5]

The Barack Obama administration has further clarified the manner in which the NSS, and in particular the National Security Council (NSC), is expected to carry out these tasks. As General Jim Jones, the national security advisor, laid out in a March 2009 memorandum:

- The NSC is expected to be *agile*, capable of coping with multiple major issues simultaneously.
- The process will be *transparent.* This requirement is expected to facilitate the flow of information between the various government agencies involved in the formulation and execution of national security policies.
- Predictability will be a hallmark of the NSC process. Briefing materials will be distributed in a timely manner, agendas will be promulgated in advance, and clear record of decisions made and not made will be maintained.[6]

The outputs of the NSS are decisions which, in turn, are translated into actions. Sometimes the decision and the subsequent action are to "do nothing." These outputs then directly and indirectly influence all three systems of the model. Thus the model incorporates a feedback loop, and can be used as a tool to analyze a series of decisions, as well as a one-decision "snapshot."

Before discussing how the decision-making process can be analyzed, it is necessary to touch briefly on the role of situational factors and informational uncertainty in the model. These aspects of the decision-making process affect every portion of the model. Failure to take them into account increases dramatically the possibility of flawed analysis.

Situational factors are elements that contribute to the unique nature of each decision. At the level of the IPS such factors could include the polarity, or distribution of power within the IPS, whether or not a particular actor possessed weapons of mass destruction, a global dependency on oil, geographical or climatic conditions, and so on. At the domestic level, an impending presidential election, the state of the economy, time elapsed since the last major conflict, and the degree to which populations in the United States possess a shared, cross-border identity are all examples of situational factors. Within the NSS, situational factors might include the availability and competence of certain military units, the age of the participants in the decision-making process, and the amount of time available to the decision makers to select a course of action.

Informational uncertainty also occurs at every point of the model. Decision makers rarely, if ever, have all the information they want. Even when inputs to the decision-making process are clearly perceived, as would be the case for a documented movement of foreign troops to a contested international border, the rationale behind these movements may be

unclear. Are the troops there as merely a show of force, or are they moving to preinvasion jump-off points? On the domestic level, outcomes of votes taken in Congress are often laced with uncertainty, as is the predicted duration and strength of public support for a given course of action. Equally unpredictable may be the manner in which the domestic media handle a given story. Nor does uncertainty only impact inputs. Outputs are also affected. Among the most powerful uncertainties is often the inability to fully answer the question, "Will this decision solve or improve the problem?"[7]

It is also important to identify what national interests are involved in the issue being analyzed. Since the end of the Cold War, the term "national interest" has been applied to many issues that previously would not have been considered as such. For example, issues involving biodiversity and the ecological health of the planet would not have been considered as belonging in the realm of national security in the 1950s. Neither, for that matter, would actions taken to reduce the suffering of individuals in another sovereign state be classed as a national security affair. U.S. interventions in Somalia and Kosovo during the George H. W. Bush and Bill Clinton administrations, however, indicate that this is no longer the case. For analysts of national security policy, the question of what constitutes national security involves more than just semantics. However, the I/O model can be utilized successfully whatever definition the analyst believes is correct.

THE PERSPECTIVES

The I/O model depicts four different ways of looking at the interactions in the NSS. These four perspectives (rational actor, organizational behavior, governmental politics, and cognitive) are listed above the NSS "box."

Very briefly, the rational actor perspective assumes that decisions are based on the desire to promote a clearly identified national interest, and that all the costs and benefits of the various options are weighed in order to make a choice. (It also assumes that governments will function as unitary actors rather than as a loose collection of organizations.) The organizational behavior perspective maintains that differing organizations within government exert influence on the decision-making process with an eye to promoting the interests of those organizations. Decisions are often made to protect the interests of these organizations, rather than to advance generic "national interests." The governmental politics perspective offers a different twist on this idea. Rather than presenting the idea that organizations are having the most influence on the decision process, the governmental politics model sees that role as being filled by the decision maker's closest and most powerful advisors. The fourth perspective, which has been labeled as the cognitive perspective within the PMP course, argues that the decision maker's personal beliefs, values, experiences, and emotions are much more influential in reaching a decision than the other perspectives would suggest.

The PMP course as taught at the Naval War College does not suggest that one of these perspectives is the "right" perspective. All depict and provide a means of analyzing forces that may be active in a decision domain. In fact, the forces examined through these

perspectives are often active at the same time, perhaps working to propel the decision maker toward a given decision, perhaps pulling the decision maker in different directions.

PUTTING IT ALL TOGETHER

The I/O model can be used to map the components of each of the major systems, to identify the national interests involved in the case and to link specific actors to discrete inputs, and to identify the impact those inputs had on the decision-making process. It is also possible to identify linkages between various actors and the role of situational factors, uncertainty, and feedback in the decision-making process. Once this is completed, it is possible to apply the rational actor, governmental politics, organizational, and cognitive perspectives to gain a deeper appreciation of the forces which impacted, shaped, and drove the decision-making process.

If all that case studies were able to do was provide a deeper understanding of past national security decisions, they would be valuable to participants in the national security decision-making environment. However, this method of looking at national security decisions performs a much greater task than simple historical analysis. A greater understanding of past decision making can generate valuable lessons learned that can be applied to current and future decisions. Using the tools, techniques, and concepts found in these case studies participants in the decision-making environment can more readily identify the forces acting on the decision-making process and counter or exploit those forces in order to best further the national interest. Furthermore, a study of past decisions may also provide the practitioner with the means of more accurately determining the probability that a given option will be the one chosen.

Notes

1. See for example Graham Allison, "Conceptual Models and the Cuban Missile Crisis," in Morton Halperin and Arnold Kanter, eds., *Readings in American Foreign Policy* (Boston: Little, Brown, 1973), 50–51; and J. March and H. Simon, *Organizations* (New York: Wiley and Sons, 1958), 140–141. The work of John Steinbruner, Irving Janos, and many others is also pertinent to the articulation of alternative depictions and descriptions of government decision making.
2. Alexander George, *Bridging the Gap: Theory and Practice in Foreign Policy* (Washington, DC: United States Institute of Peace Press, 1996), 135.
3. David Easton, *A Framework for Political Analysis* (Englewood Cliffs, NJ: Prentice-Hall, Inc., 1965).
4. William C. Adams, "Opinion and Foreign Policy," *Foreign Service Journal* 6, no. 5 (May 1984).
5. Allan Ricketts and Richard J. Norton, *National Security, Volume 1: Case Studies in Policy Making and Implementation* (Newport, R.I.: Naval War College Press, 1994), 5.
6. James L. Jones, White House Memorandum, Serial Number 4409001013 (18 March 2009).
7. Ricketts and Norton, *National Security, Volume 1,* 7.

Part I:

Current Policy Analyses

1

Continuity and Change in U.S. Policy toward Colombia, 1999–2009

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U.S. policy toward Colombia in the first year of the Barack Obama administration provides an excellent case in which to examine the question of continuity versus change between presidential administrations, as some aspects of President George W. Bush's policies have been retained while others have been downgraded. It also highlights the important role that domestic issues and political actors can play in terms of limiting a president's freedom of action on the international stage.

Presidential candidates usually run for office promising decisive breaks with the policies of their predecessors. In the case of Colombia, the outlines of policy were first set by a Democratic administration (Bill Clinton), then embraced and expanded by a Republican presidency (George W. Bush), and have largely been accepted by Barack Obama.

Colombia policy is also an excellent way to examine how the standards for assessing the "success" or "failure" of a policy evolve over time. Initially, the set of policies that came to be associated under the moniker of "Plan Colombia" was presented as a plan to stop the flow of narcotics into the United States. The focus then shifted to strengthening a weak state and supporting a fragile democracy. What started as a counternarcotics (CN) plan grew into a more comprehensive counterinsurgency (CI) strategy. In 2010, "Plan Colombia" is generally considered to be a failure in terms of stemming the narcotics tide, but is viewed as an example for how the United States can assist an ally in conducting counterinsurgency and state stabilization operations, with implications for ongoing operations in other parts of the world, including in Afghanistan.[2]

DRUGS AND THE CLINTON ADMINISTRATION

The U.S. "war on drugs" was originally proclaimed by President Ronald Reagan more than two decades ago. When the Cold War ended, and national security was no longer preoccupied by the Soviet threat, greater attention could be paid to using the foreign and defense apparatus of the United States to limit the flow and use of illegal narcotics, beyond seeing drug abuse as a "domestic" issue.

Initially, the Clinton administration put a great deal of emphasis on domestic treatment programs. During the first five years of the Clinton administration, overall funding for national drug control rose slightly, from roughly $12 billion for Fiscal Year (FY) 1993 to $15 billion in FY 1997, but the interdiction and international portions of the budget

experienced a slight decline ($2.5 billion to just over $2 billion). This approach drew the ire of conservatives who felt that President Bill Clinton and his team did not particularly emphasize the international aspects of the drug issue. A 1994 Heritage Foundation report pointed out:

> A partnership with the cocaine-source countries of Bolivia, Colombia, and Peru was launched by President Bush at his summit meeting with their presidents in Cartagena, Colombia, on February 15, 1990. The results of this partnership have been mixed, and the policy question facing the Clinton Administration should have been whether those results can be improved and, if so, how. But the "new" Clinton approach says little about this issue. . . . Other nations are unlikely to take seriously a "new initiative" that has neither the interest of senior foreign policy makers nor significant resources behind it.[3]

After the 1994 midterm elections, when the Democrats, under Clinton's watch, lost control of both houses of Congress to the Republicans, the administration began to refocus both its domestic and its foreign policies.[4] There was now a greater sensitivity to being perceived as "strong" on fighting crime and drugs. Congressional Republicans, in turn, found vulnerabilities in the administration's stance on these issues. Among the most vocal critics was Speaker of the House Dennis Hastert, who had chaired an informal group of Republicans termed the "anti-drug task force." A 25 March 1998 "Issue Brief" published by the House Republican Conference alleged: "The Administration's response and inattention to this growing national crisis, and the resulting explosion of drug use across the nation, is frightening." The Clinton administration could argue that total illicit drug use by 13.6 million Americans in 1998 was far below the 1979 peak of 25.4 million, but for many Americans, the numbers were still too high. And part of that perceived problem was not paying more attention to stopping drugs at the source—meaning bringing the "war on drugs" back to South America.[5]

COLOMBIA DURING THE 1990S

Colombia was (and remains) one of the largest producers of the world's cocaine and increasing percentages of the world's heroin. Colombia's internal terrain and access to both the Atlantic and the Pacific oceans make the country the ideal production and shipment location for cocaine. By this point in time, Colombia was also one of the most violent countries in Latin America, having suffered through the hemisphere's longest-running leftist guerrilla insurgency.

The Revolutionary Armed Forces of Colombia, known by its Spanish acronym, FARC, was set up by Manuel *Tirofijo* ("Sureshot") Marulanda and Jacobo Arenas (the "nom de guerre" of Luis Morantes) in 1966. Traditionally, its base of strength was to be found in the southern departments (states) where most of Colombia's coca is grown and processed. The other major guerrilla group is the National Liberation Army, known by its Spanish acronym, ELN. Formed in 1964 in the north-central department of Santander by radicalized students and Catholic priests, the group follows a Cuban model of guerrilla warfare. With its proximity to Colombia's oil fields, a good portion of the ELN's income was derived from

extortion of the major oil companies, and its "signature" terror tactic has been blowing up oil pipelines, which in the past has not only caused ecological damage, but deprived the government of much-needed revenue from energy.

One of the big reasons for FARC/ELN strength and persistence was the drug trade. As cocaine became the U.S. "drug of choice" in the late 1970s, Colombia virtually cornered the market for processing and transshipment of the world's cocaine supply. With effective coca eradication programs in Peru and Bolivia in the mid-to-late 1990s, coca cultivation also moved to Colombia. The FARC seized the opportunity to "tax" the cocaine producers and, according to the U.S. Drug Enforcement Agency, is now directly involved in production and trafficking. The FARC is estimated to receive some $600 million in annual income from the drug business, and some estimate that up to 50 percent of the world's supply of cocaine is coming from FARC-protected fields.[6] This steady income stream means that the FARC "remains the best equipped, trained and organized guerrilla organization in Latin America."[7]

Ironically, this symbiotic relationship between guerrilla and trafficker may have been enhanced by effective U.S.-Colombian government action in the war on drugs during the 1980s. With the killing of notorious drug kingpin Pablo Escobar in December 1993, and subsequent dismantling of the Cali and Medellín cartels, the Colombian drug industry adapted by decentralizing into hundreds of smaller, loosely connected "mini-cartels." This made effective targeting and law enforcement more difficult, while facilitating interaction with the rebel resistance groups and Colombia's other illegal army, the paramilitaries.[8]

Other players in the violence in Colombia included the paramilitaries. From 1964 to 1987, armed civil defense forces were permitted under Colombian law as an adjunct to the army's antiguerrilla campaign. Although they were outlawed in 1987, they were openly tolerated until the mid-1990s, since the paramilitaries seemed to directly support the government battle with the guerrillas.[9] But both narcotics and legitimate businessmen are also contributors to the "paras." The rise of the drug cartels was accompanied by purchase of large tracts of land by the drug kingpins. Along with cattlemen, large farmers, and major industries, the drug cartels began forming private armies to protect their holdings. In April 1997, these various militias formed an umbrella organization, the United Self-Defense Forces of Colombia, or AUC, under the leadership of Carlos Castaño Gil, claiming that because the Colombian state could not provide security against the guerrillas, the AUC would step forward to meet the gap. But the AUC, like the FARC, soon found that the drug trade provided an inexhaustible supply of income.

In addition to these concerns about drugs reaching the United States—and wreaking havoc in U.S. communities—Washington was growing concerned about the destabilizing effects the Colombian drug industry had on other countries in Central and South America, threatening other fragile democracies and undermining regional efforts to counter narcotics. This reflected a shift in priorities from the days of the Cold War; in the 1970s and 1980s, the United States was more concerned about stopping pro-Soviet communist insurgencies like the FARC. Now, it was not the FARC's ideology that was the problem as much as its linkages to the cocaine trade.

The Clinton administration, however, did not see the government of Colombia, led by President Ernesto Samper, as a reliable partner to counter these challenges. Corruption within the army and charges of human rights abuses and collaboration with drug traffickers tarnished the reputation of the military.[10] Senator Patrick Leahy (D-VT) was a noted congressional critic of the Colombian military, charging that the army "was responsible for nearly 20 percent of all political killings and 'disappearances.'"[11]

Samper himself was beset by charges he was supported by the drug lords, and in early 1996 allegations surfaced that the Cali drug cartel had contributed $6 million to his campaign. Samper was formally charged in February 1996, and President Clinton decertified Colombia as cooperating with counternarcotics efforts. This decertification, which was repeated in 1997, barred Colombia from receiving U.S. foreign aid. (However, due to a loophole in the legislation, Colombia could still receive counternarcotics assistance, so total U.S. funds to Colombia actually *increased* from approximately $50 million to $150 million from FY 1996 to FY 1998).[12] The Colombian Congress absolved Samper of all charges in June 1996, but the State Department revoked his visa to travel to the United States the next month. While U.S. engagement with Colombia continued, it would take a change in Colombian administrations before any new dramatic initiatives were politically possible.

ARRIVAL OF THE PASTRANA ADMINISTRATION

The election of Conservative Party candidate Andrés Pastrana in 1998 presented an opportunity for the Clinton administration to restart relations with Colombia. Pastrana had a reputation for not being corrupt, and he had been one of those who had exposed Samper's connections to the drug cartels.[13]

Pastrana had run on a "peace platform," promising to open negotiations with the rebels to end the fighting. He also called for a new "Marshall Plan" for Colombia, which would aid Colombian farmers in transitioning from growing coca to other, alternative crops. His initial proposals focused on economic and development aid as the main components for combating the scourge of the drug trade. Pastrana's efforts were cautiously welcomed by Washington, and the Clinton administration, which previously had ruled out economic aid as part of a counternarcotics strategy because of concerns about corruption, particularly in the Samper administration, was now willing to consider it.[14]

But Pastrana's bargaining position with the rebels was seriously undermined just two days before he took office, when, on 5 August 1998, the Colombian army suffered its worst defeat at the hands of the FARC. His ambitious proposals for an economic strategy to combat the drug trade also suffered when Colombia was plunged into recession, with the gross domestic product contracting by 4.3 percent in 1999.

A weakened Pastrana administration agreed, on 6 November 1998, to withdraw government forces for ninety days from an area roughly the size of Switzerland in southern Colombia (termed the *despeje,* or demilitarized zone). This created an area in which FARC guerrillas were ostensibly free to assemble while peace talks were being held. Peace talks did not begin until 7 January 1999, and continued with numerous suspensions and

resumptions, but little real progress. The deadline for reoccupying the *despeje* was continuously extended beyond the initial deadline and expired only in November 2001. For Pastrana, who had tied the reputation of his administration to the peace negotiations, every suspension of negotiations was a threat to his political credibility. Additionally, Pastrana grew increasingly at odds with his military, who had never favored the creation of the *despeje* in the first place. Things came to a head in May 1999, when Defense Minister Rodrigo Lloreda and two dozen top officers tendered their resignations. Pastrana accepted the departure of the defense minister but convinced the officers to remain, promising to increase military pressure on the guerrillas. When the FARC launched a multifront attack with four thousand rebels from the *despeje* in July 1999, the situation in Colombia seemed to be spiraling out of control.[15]

THE ROAD TO PLAN COLOMBIA

These events spurred an administration policy review by a National Security Council "ExCom" for Colombia. It was at this point that the Clinton "drug czar," retired general Barry McCaffrey, took the initiative, proposing an additional $1 billion of funding for Colombia. Rand Beers, the assistant secretary of state for international narcotics and law enforcement affairs, had also long argued for increased funding for the Andean region to combat drug trafficking. McCaffrey also had a strong ally in General Charles E. Wilhelm, the commander of U.S. Southern Command (SOUTHCOM). Described by Dean Cook as a "policy entrepreneur," Wilhelm was not simply a career military officer but was also "no stranger to Washington or the interagency process, having served from 1990 until 1992 as deputy assistant secretary of defense for Policy and Missions within the Office of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict."[16] Wilhelm encouraged the Colombian military to "take a more direct stance against the narcotics production industry in the region. At the same time, he began to make the case in Washington for increased U.S. military assistance that would help make such an effort possible and successful."[17]

For much of the second term, these proposals had been downplayed in favor of diplomatic efforts. But though President Clinton triumphed over Senator Bob Dole in the 1996 campaign, the charge that Clinton was "soft on drugs" was one that had resonated. As Democrats geared up for the 2000 campaign, alarming poll data was coming in that suggested drugs could be an "Achilles' heel" issue for both the Democratic Party's nominee for president and its congressional candidates. McCaffrey argued that if Pastrana's peace negotiations failed, and Clinton did nothing, the United States could find itself engulfed in a blizzard of Colombian cocaine shipments—for which the president would receive the blame. In September 1999, pollster Mark Mellman reported that the "the public perceived that 'drug use' was on the rise and was inclined to blame Democrats." Mellman also released data that showed Americans would support a new aid package for Colombia if it were tied to drug interdiction and eradication.[18]

Using funds already allocated to the Department of Defense to assist in counternarcotics operations, Wilhelm initiated the training of a Colombian army CN battalion in April

1999—but he was well aware that additional funds could only come with congressional support. Wilhelm and Lloreda's replacement as defense minister, Luis Ramirez, were well aware of the need

> to articulate the Colombian requirements and justify those requirements. Furthermore, they know that there would be little support—in Washington or Bogota—for a military build-up without a commensurate effort to address the root causes of the conflict through programs focusing on poverty alleviation, alternative economic development and administration of justice. What they needed was a comprehensive plan for Colombia.[19]

In mid-August 1999, Under Secretary of State Thomas Pickering and Beers traveled to Colombia to caution Pastrana that he risked weakening U.S. support if he made any more concessions to the guerrillas. Conversely, if a workable strategy to fight the guerrillas and combat drug trafficking could be crafted, the United States might be willing to provide considerably more financial support. Congressional Republicans indicated that they would sign on "provided the aid package gave a military approach pride of place." The State Department made it clear that "the U.S. will sharply increase aid if [Pastrana] develops a comprehensive plan to strengthen the military, halt the nation's economic free fall and fight drug trafficking." The draft plan called for spending $7.5 billion over six years. Four billion dollars were to be provided by Colombia, with the other $3.5 billion to come from the international community.[20]

Pastrana announced his plan in a speech at the United Nations on 23 September 1999. The plan drew eager endorsement from the Clinton administration. State Department spokesman James Rubin noted:

> We applaud the GOC's [government of Colombia's] strategy as an ambitious, but realistic, package of mutually reinforcing policies to revive Colombia's drug-ravaged economy, reinforce the democratic pillars of its society, advance its peace process, and eliminate "sanctuaries" for narcotics producers and their agents. The U.S. Government will carefully review Colombia's request for international assistance and, in consultation with the Congress, develop proposals on how the U.S. can best assist the GOC.[21]

The comprehensive breadth of what began to be called "Plan Colombia" (building off of Pastrana's initial call for a "Marshall Plan") allowed different constituents to view the plan in the way they most preferred. For Colombians, the emphasis on peace and security was attractive, the counternarcotics strategy resonated within the United States, and the peace and social development aspects found a favorable hearing in Europe.[22]

But not all parties were prepared to fund all parts of Pastrana's vision equally. Ultimately, the European Union (and its various member states) only pledged $332 million in aid in 2000 to support the "peace" pillar of Pastrana's plan, in part due to the emphasis placed on building up the military capacities of the Colombian state.[23] Marc Eric Williams and Vinay Jawahar have argued: ". . . [A]larmed by the Plan's military thrust and miffed by Washington's failure to consult them during the project's planning stages, European states

disassociated themselves from Plan Colombia. . . . Thus, rather than a true multilateral effort, Plan Colombia quickly became very much a U.S. project. . . ."[24]

In turn, despite Pastrana's "wish list," the Clinton administration and members of Congress—both Republicans and Democrats—began to craft a proposal that suited their own interests. As the plan began to take shape, it focused primarily on the military aspects of the counternarcotics mission. Nearly 75 percent of anticipated aid would be earmarked for training and equipping the Colombian military's antinarcotics battalions, supplying helicopters and focusing on increased aerial operations for interdiction and drug crop eradication. Only 14 percent would focus on strengthening the capacity of the Colombian state, and 12 percent was devoted to alternative economic and development projects.[25]

The implementation strategy for the first two years of the plan, *Plan Colombia: Interagency Action Plan*, was a joint U.S.-Colombian effort in which members of the departments of State, Justice, Defense, and Commerce; Office of National Drug Control Policy; and U.S. Agency for International Development participated. This document operationalized the initial steps in Plan Colombia and set the key initial strategy of a "push to the south" (i.e., into the southern coca-producing regions of Colombia that were also the strongholds of the FARC). The southern strategy consisted of deploying the Colombian National Police (CNP), supported by specially trained units of the Colombian army, to conduct intensive coca eradication efforts in the southern departments of Putumayo and Caquetá. These eradication efforts were primarily conducted through aerial fumigation with the chemical glyphosate, marketed in the United States as "Roundup." The major U.S. contributions to the plan were the training of three specialized CN battalions to create a counternarcotics brigade; provision of helicopters for mobility of these battalions and the CNP (16 Black Hawks and 57 Hueys); and direct, contracted support to the aerial fumigation program.[26]

The counternarcotics thrust of the plan answered a political need in the United States, but was also attractive to the Colombian military, which did not support Pastrana's peace overtures to the rebels. Even if the stated reason for U.S. aid was to support counternarcotics operations, the "southern push" strategy into the departments of Putumayo and Caquetá would help to fortify the army's presence directly adjacent to the FARC *despeje*. For the Colombian military, Plan Colombia was essentially a CI strategy disguised as a counterdrugs operation.

GETTING PLAN COLOMBIA PASSED

President Clinton formally presented his proposal for Colombia to Congress on 11 January 2000.[27] Already, there were significant concerns that the administration's proposals would draw U.S. forces into active involvement in the Colombian civil war. Testifying in 1999 before the Senate Caucus on International Narcotics Control, Rand Beers acknowledged: "We have no intention of becoming involved in Colombia's counterinsurgency, but we do recognize that given the extensive links between Colombia's guerrilla groups and the narcotics trade, that counternarcotics forces will come into contact with the guerrillas and must be provided with the means to defend themselves."[28]

The caucus chairman, Senator Charles Grassley (R-IA), was not entirely convinced:

> . . . [T]he present tendency in US policy would have us more deeply involved in Colombia's insurgency. Reports show that the guerrillas are now engaged in a major way in protecting and profiting from the drug trade. If so and we plan to expand efforts to go after that trade, then stepped efforts to deal with increased drug production involves us in confronting the guerrillas. This raises a host of questions that have yet to be adequately addressed by the Administration. It certainly has not explained its policy to Congress or the public. We are left with the appearance of a policy of drift and dissembling.[29]

The Plan Colombia proposal conjured up one of the most enduring specters in American foreign policy debates over the last half century, that of the Vietnam War. Would the United States be drawn into a counterinsurgency campaign in the jungles of South America? Wilhelm made a point of stressing in his testimony before Congress that this analogy was flawed, but the argument was compelling enough that the State Department felt it necessary to distribute a fact sheet entitled: "Why Colombia Is Not the 'Next Vietnam.'"[30] In order to reassure Congress (and the American public), the Clinton administration proposals specifically prohibited U.S. military trainers from engaging in combat or situations where combat would be imminent. However, there were no such bans enacted applying to State Department contractors, who would pilot the sprayers and covering helicopters that would engage in coca fumigation efforts. Anticipating a trend that has accelerated over the past decade, part of the Colombia mission was entrusted to private contractors.[31]

Because Plan Colombia was cast in counternarcotics terms, it engaged the larger constituency of all those interested in U.S. drug policy—and many saw Plan Colombia as an unwise diversion of funds, arguing that the relatively small cost of producing drugs compared with the tremendous profits they generate dooms supply-reduction efforts to failure. Ted Galen Carpenter, from the conservative/libertarian think tank the Cato Institute, argued: "The brutal reality is that, as long as drugs are illegal, there will be a huge black-market premium—a lucrative potential profit that will attract producers. Plan Colombia cannot repeal the economic laws of supply and demand."[32]

Environmental groups objected to the aerial fumigation and crop eradication efforts of the plan. The World Wildlife Fund cited the "potentially grave environmental impact" of aerial fumigation and compared it to the Agent Orange debacle of Vietnam. Even the United Nations Drug Control Program attacked the spraying as "inhumane" and "ineffective," noting that aerial eradication efforts in Colombia had been conducted from 1994 onward, and in that time, coca production *increased* dramatically.[33]

Critics of Plan Colombia also focused on corporate interests. The Mellman poll that had such an influence on the Clinton White House had been commissioned not by the Democratic Party but by Lockheed Martin, the manufacturer of P-3 radar planes used in drug interdiction operations. Others pointed to the lobbying efforts of Textron, which makes the Bell Huey helicopter, and United Technologies, whose Sikorsky Aircraft division makes the Black Hawk—noting that both types of helicopters would be part of any aid package to

Colombia. Occidental Petroleum, whose pipelines were regularly sabotaged by rebel groups in Colombia, was also seen as lobbying for Plan Colombia's passage.[34] Private military companies also stood to benefit from additional contracts. In "following the money trail," *Newsweek* reporters Michael Isikoff and Gregory Vistica raised concerns about large "soft money" donations made by United Technologies to the Democratic National Committee weeks before Plan Colombia was unveiled by the president. Some also hinted that Senator Christopher Dodd (D-CT) was a supporter of the plan because Clinton's proposal called for 30 new Black Hawk helicopters—manufactured in Connecticut—to be sent to Colombia, even though administration officials acknowledged that the Colombian army lacked enough hangars and pilots to handle so many new aircraft. (Dodd, for his part, denied any lobbying efforts on United Technologies' behalf with the administration.)[35]

Foreshadowing a technique that would be embraced by later administrations, "Plan Colombia" was not presented to Congress as a stand-alone piece of legislation or even as part of a more general foreign aid bill, but as an emergency supplemental attached to the Military Construction Appropriations Act. Given the importance of other provisions of this legislation to members of Congress, particularly in an election year, the portion of the supplemental providing $1.3 billion in funding for counternarcotics operations passed with limited debate.[36] Moreover, as Nancy Pelosi (at the time not yet House minority leader or Speaker) observed, "No one wants to seem soft on drugs. The White House and Congress don't ever want to be seen as not doing all they can to stop the flow of drugs—even if it's the wrong policy."[37] Moreover, there were strong and credible voices in favor of this increased U.S. effort to aid Colombia. Wilhelm was a major and compelling advocate, traveling to Washington some 21 times during FY 2000 to argue on behalf of Plan Colombia.[38] The general maintained that it was not in the interests of the United States to see a friendly government overthrown by an insurgency or transformed into a narco-state, and he argued:

> We are turning the corner in Colombia. With your continued support and assistance we can and will resolve the two most stressing challenges to the security, stability and prosperity of a region that is rapidly growing in importance to the U.S.—the national crisis in Colombia and the hemispheric crisis generated by illegal drugs and their corrosive effects on our society and those of our neighbors to the South.[39]

Another factor that helped to generate support was the perception in Washington of anemic support on the part of Colombia's neighbors for assisting Bogotá in coping with both the drug traffickers and the insurgency. Professor Laurence McCabe, one of the Naval War College's leading experts on Colombia, has observed that policy makers pushed for a more active U.S. role in Colombia in part because of the lack of engagement shown by other states in the region in tackling these issues.

Following the successful strategy of "triangulation," President Clinton was also able to isolate some of the more vocal critics of the plan, such as House members Jan Schakowsky (D-IL) and David Obey (D-WI) and Senators Paul Wellstone (D-MN) and Leahy. With the support of centrist Democrats and Republicans, the supplemental passed; for instance, in the House of Representatives, 119 Democrats joined 143 Republicans to pass the legislation.[40]

Plan Colombia became official U.S. policy when President Clinton signed Public Law 106-246, on 13 July 2000. Depending on the account one chooses to accept, the law was either 1) the response to a reasoned plea from a respected foreign leader; 2) the skillful manipulation of the process by policy entrepreneurs; 3) a policy "forced" on a reluctant president by an activist Congress; or 4) an administration initiative to close one last vulnerability in preparation for a presidential election. The truth of the matter is that it was probably all of the above.

But while the administration was successful in getting the package approved, it had done so by denying the CI side of Plan Colombia and selling it as a counterdrug strategy. As Dean Cook concludes: "Despite occasional warnings of the potential for state collapse, however, this . . . argument was less clear and ultimately less convincing—or less politically viable—for the Clinton administration and Congress. Thus, virtually the entire policy debate of whether to come to Colombia's assistance occurred within the context of curbing the flow of illegal drugs. . . ."[41]

Opponents of Plan Colombia, however, were successful in modifying several parts of the plan. Human rights organizations such as Human Rights Watch (HRW), Amnesty International (AI), and the Washington Office on Latin America (WOLA) were able to get a provision inserted that put a cap on U.S. military personnel deployed to Colombia in support of the plan: five hundred military and three hundred additional civilian contractors. In addition, Senator Leahy managed to get six specific human rights certifications written into the law as conditions for release of the aid, and added language requiring the Secretary of State to consult with "internationally recognized human rights organizations" to assess Colombia's "progress" in meeting those conditions. HRW, AI, and WOLA released a detailed report documenting Colombia's failure to meet Leahy's criteria, but, on 22 August 2000, President Clinton used a national security waiver (as permitted by the law) to prevent aid from being blocked.[42] As President Clinton left office, Plan Colombia was on track.

INITIAL ASSESSMENTS

Initially, the "push to the south" was seen as a success; the aerial fumigation program in Putumayo Department proceeded apace, with some seventy-five thousand acres sprayed by February 2001. While there were also reports that the coca growers were simply moving their operations into the neighboring Nariño Department, the first stages of Plan Colombia seemed to be proceeding smoothly.[43]

But then tragedy intervened. On 20 April 2001, the war on drugs claimed two innocent victims in neighboring Peru. American missionary Veronica Bowers and her seven-month-old daughter were killed when a Peruvian Air Force plane, operating with a U.S. CIA aircraft, shot down their small private aircraft, mistaking it for a drug smuggler. The shoot down occurred on a routine "Joint Air Bridge Denial" mission, a program that had been in place since 1995. Interception and shoot-down programs in both countries were immediately suspended. (An investigation into the incident was completed in August 2001. As a result, additional safety measures were implemented to clarify procedures and improve

communications in order to avoid accidental shoot downs and the program was restarted in August 2003.)[44]

But the incident led to renewed criticism of Plan Colombia on the Hill. Representative Schakowsky introduced (ultimately unsuccessful) legislation to ban the U.S. government from using contractors in these operations. Representative Pete Hoekstra (R-MI) offered an amendment on the House floor holding up release of Plan Colombia aid until there was a thorough investigation into the incident. (Hoekstra has continued to press to this day for a criminal probe into the incident, charging that the CIA covered up evidence of inadequate procedures to safeguard against such incidents.)[45]

There were also increasing complaints and protests of the aerial eradication program during the spring of 2001. Residents of areas being sprayed complained of health problems and destruction of legal cash crops. A Colombian nongovernmental organization, the Organization of Indian Peoples of the Colombian Amazon, gained a Colombian court-ordered halt to the spraying on 27 July 2001. The suspension was reviewed just days later and overturned, and spraying resumed on 31 July 2001.[46] The same day, however, six Colombian department governors and several Colombian legislators were in Washington lobbying Congress to halt the fumigation program. However, then U.S. ambassador to Colombia Anne Patterson noted, "Fumigation is a key element under Plan Colombia. If there were a halt to aerial fumigation, there would be an immediate, probably devastating, impact on U.S. support for Plan Colombia." The State Department sought to defuse, and possibly delay, some of the controversy by requesting a study in Colombia of the effects of the chemical fumigant by the U.S. Environmental Protection Agency. Senator Leahy made it clear that, should the study reveal harmful effects, both aerial fumigation and the entirety of Plan Colombia would be called into question.[47] (On 4 September 2002, the State Department delivered to Congress a full report on the effects of aerial fumigation and found that the chemicals applied to coca fields did not pose a significant threat to the human population or the environment.)[48]

Meanwhile, in Colombia itself, Pastrana's policies were not bearing much fruit. Although talks with the ELN had shown some promise in early 2001, Pastrana's decision to negotiate for an ELN safe zone in northern Colombia much like the FARC *despeje* was extremely unpopular with many factions in Colombia, especially the military. Residents in the proposed new safe area staged numerous protests against the measure, and the paramilitaries launched their own offensive against the ELN. Finally, on 7 August 2001, President Pastrana announced he was suspending peace talks with the ELN, citing doubts about "their commitment to peace."[49]

But it was the failure to achieve any settlement with the FARC that doomed Pastrana's plan. On 11 August, Colombian authorities arrested three members of the Provisional Irish Republican Army (IRA). The IRA experts had spent the previous five weeks in the FARC *despeje* and were believed to have been training the Colombians in bomb making using advanced plastic explosives in order to attack urban targets, and an intercepted radio transmission from a FARC commander reportedly revealed him saying, "We must hit the cities

hard." To opponents of the peace process and the ceding of the zone in the first place, the IRA arrests were further evidence that the peace process was a failure and that it was time to turn up the military heat on the FARC. Renewed fighting soon erupted, but the FARC was not crushed.[50]

The uptick in fighting in Colombia led Pastrana to try and strengthen the Colombian security forces. On 16 August 2001, he signed legislation that represented "the first substantive reform of Colombian security law since 1965." The law had been strongly favored by the Defense Ministry and the Colombian military. One provision of the law allowed the military a freer hand in prosecuting the counterinsurgency, and it drew howls of protests from human rights groups. This drew the ire of some members of the U.S. Congress. Senator Leahy warned that further payments of Plan Colombia funds could be threatened, and Senator Wellstone indicated that he would propose an amendment redirecting military aid when Congress reconvened in September 2001.[51] And the spike in violence in Colombia also alarmed other members of the U.S. Congress, who worried that Plan Colombia could spiral into an open-ended U.S. commitment. Senator John McCain (R-AZ) called for "a detailed analysis explaining how long the U.S. commitment to Plan Colombia would last and how much it would cost." Matters were not helped when Pastrana described the plan as "long-term," lasting "maybe 15 to 20 years."[52]

Pastrana thus entered the final months of his administration with the failure of his peace initiatives and with increased violence spreading across the country. Pastrana, according to some observers, had no real counterinsurgency strategy in place and delegated much of the planning to the military.[53] Some questioned whether U.S. policy, designed to curtail the shipment of narcotics out of Colombia, entailed supporting the Colombian government in crushing its various insurgencies, thus drawing the United States into what was effectively a Colombian civil war. But despite all these complaints, efforts by some House Democrats on the Appropriations Committee, led by Nancy Pelosi and David Obey, to redirect Plan Colombia funds (to U.S. domestic programs designed to reduce demand for drugs) failed. Congress instead voted to expand the funds made available to Colombia.[54]

THE BUSH ADMINISTRATION'S POSITION

Candidate George W. Bush pledged during his campaign that he would "look south, not just as an afterthought but as a fundamental commitment of my presidency" and expressed his support for Plan Colombia.[55] In the first months of his administration, he worked to invigorate U.S. ties with Latin America. His first trip outside the United States was a visit to Mexico in February 2001, and by the end of February, official delegations from Colombia, Ecuador, Chile, Brazil, and El Salvador were traveling to Washington to meet the president or his new secretary of state, Colin Powell.[56]

Because the Bush campaign had harshly criticized the national security policies of the Clinton administration during the campaign,[57] there was the expectation that many of the policies of the previous team would be reversed or downgraded. The new administration did want to demonstrate a clear and decisive break with its predecessor when it came to

foreign and defense policy.[58] Some detected in comments made by Peter Rodman, the newly appointed assistant secretary of defense for international security affairs, a hint that the Bush administration might not continue with Plan Colombia. When asked to comment on Colombia policy, he had noted, "I think there's a consensus that there's an important American interest, but there is not necessarily a consensus about what the right way to serve that interest is."[59] But the president himself endorsed Plan Colombia at the Summit of the Americas (in April 2001), signaling that there would be some continuity with the past administration when it came to policy in the Western Hemisphere. Phillip Reeker, the State Department deputy spokesman, tried to minimize the impact of Rodman's statement by stressing the "consensus" view of the administration: "[T]he Bush administration has a clear policy toward Colombia, which is to support democracy, combat narcotics trafficking, and support social and economic development."[60] And Secretary of State Powell traveled to Colombia in September 2001 to convey the message to Pastrana: the Bush administration would continue with Plan Colombia.[61]

The president also proposed an "Andean Regional Initiative (ARI)" that answered some of the criticism that Plan Colombia was too focused on Colombia and too militaristic. The ARI proposal was for $882 million in FY 2002 funding, with roughly 45 percent going to Colombia and the rest to the neighboring nations of Panama, Ecuador, Peru, Bolivia, Brazil, and Venezuela. The requested funds were also nearly evenly divided between programs for economic/social development and for counternarcotics/security. At an on-the-record State Department briefing of the plan, career civil servants who had also served in the previous administration characterized the policy as a continuation of a balanced strategy begun in 2000. The speakers frankly admitted that Plan Colombia, as enacted by the Clinton administration, had been weighted toward the military because policy makers had seen the opportunity to obtain the "big ticket" items (helicopters), and that the more balanced approach now endorsed by the Bush administration had been their intention all along.[62]

The events of 9/11 changed how the situation in Colombia was viewed by many in Washington. The presence of the IRA experts assisting the FARC lent new credence to the concept of a "war on terror" by highlighting the global linkages between terrorist organizations. Energy security also became a greater priority on the U.S. agenda, and with Colombia now the third-largest Latin American supplier of oil to the United States (after Venezuela and Mexico), attacks by the ELN on Colombia's energy infrastructure became an issue. Colombia was now no longer just about drugs. In testimony before the House Committee on International Relations Subcommittee on the Western Hemisphere one month after the attacks, James Mack, deputy assistant secretary of state for international narcotics and law enforcement affairs, noted, "There often is a nexus between terrorism and organized crime. Many of the skills and types of equipment needed to attack organized crime are applicable to combating terrorism." Mack made the Bush administration's case for why continuation and expansion of policies like Plan Colombia was essential to U.S. national security.[63]

The Bush administration also began to argue that there was no clear distinction between CN and CI operations in Colombia. Robert Zoellick, who served as a top foreign policy advisor to Bush during the 2000 presidential campaign and entered the administration as U.S. trade representative (ultimately becoming deputy secretary of state), argued, "We cannot continue to make a false distinction. The narcotraffickers and guerrillas compose one dangerous network."[64]

These arguments resonated on the Hill. A nonbinding resolution passed the House on 6 March 2002, calling on the president to develop policies that protect the United States from the "scourge of illicit narcotics," a trade being facilitated by "U.S.-designated terrorist groups." Congress followed up by lifting previous restrictions on counterinsurgency aid (limiting assistance to counternarcotics efforts) in order to help Colombia combat its rebel organizations as well as to provide aid in the protection of Colombia's oil pipelines.[65] Both the State Department and the Defense Department lobbied for this change, arguing that there was "no clear line between drug and terrorist activity."[66] (The FARC and ELN had both been designated as terrorist organizations in 1997; the AUC was added to the list in 2001.) This represented a "significant shift" in U.S. policy from the Clinton administration, which had limited military aid to strictly counterdrug operations. Now, the United States was committed to assisting the Colombian government in a much wider counterinsurgency mission.[67]

A NEW PARTNER: ALVARO URIBE

This shift was aided by a change in administration in Colombia. On 26 May 2002, Alvaro Uribe was elected as Pastrana's successor. Uribe's main focus for Colombia was to rid the country of the rebel groups; his own father had been assassinated by the FARC. In fulfilling his promises to bring about "democratic security" for Colombians, Uribe moved to try and bring back a degree of security to the citizenry by forcing rebel forces out of populated areas and back into the hills and high country.

To regain control of the country, Uribe also focused on revamping Colombia's army and police forces. At the beginning of his term, he imposed a significant tax to generate revenue for the expansion of Colombian military forces. By the end of 2005, the Colombian security establishment had grown to nearly 347,000 men. The force structure consists of 15 army brigades, seven mountain brigades, 54 police squadrons, and several thousand foot soldiers.[68]

In addition to the military expansion Uribe implemented during his first term, he called for a $3.7 billion upgrade to Colombian forces. This would allow for the purchase of additional fighter aircraft (Israeli-made Kfir jets) and helicopters as well as provide more soldiers and police to continue the fight against armed groups and drug traffickers. The dramatic increase in military capability for security was only the first step in Uribe's plan to implement his strategy for retaking the country from the guerrillas and laying the basis for social and economic reconstruction. His proposals, estimated to cost $44 billion if fully implemented, envisioned a seven-year plan (to 2009) not only to deal with drug trafficking,

but also to bolster social programs, human rights programs, judicial capacity, and international trade—relying on the hope of continued aid from the United States and Europe.[69]

Uribe soon deployed his vastly augmented military forces to implement his Plan Patriota, designed to retake guerrilla-held areas, establish a clear government presence, and then (hopefully) deliver social services. Beginning in 2003, a concerted effort was made to clear the state of Cundinamarca (surrounding the capital, Bogotá) of the FARC; the campaign then gradually expanded to clear other parts of the former *despeje*. Plan Patriota has not ended the violence, but it did deprive the FARC of much of its "state" and its tactics have shifted back to terrorist strikes and guerrilla warfare as a result.[70]

Uribe also pushed for (and signed) a "Justice and Peace Law" designed to encourage the paramilitaries to demobilize and reintegrate into Colombian society. The U.S. State Department reported over 14,000 AUC members had demobilized in 2005 under the auspices of this new law, which provides some immunity from prosecution for those who agree to give up their arms and membership in the paramilitaries.[71] Many humanitarian groups voiced outrage at this decision, claiming that numerous violators of human rights would walk away with nothing more than a slap on the wrist. Human rights groups also objected to another Uribe policy: the resurrection of a nearly forgotten law from the 1940s allowing for the formation of "home guard" units, made up of draft-eligible Colombians who serve as local guards in lieu of joining the national military.[72]

In addition to being "tougher" on the guerrillas, Uribe won favor with the Bush administration because of his strong support for U.S. foreign policy, notably the Iraq war. The survival and success of the Uribe administration became a Bush foreign policy priority, especially given the growing regional influence of Venezuela's president, Hugo Chávez. Chávez's stated desire has been to form a new "axis of power" with other nations in the region to counter U.S. influence. Chávez reached out to U.S. opponents like Fidel Castro of Cuba and Saddam Hussein (prior to his overthrow in 2003) and in one famous moment, at the United Nations in 2006, called Bush "the devil" and said the United States under his administration was the "first enemy" of his revolution in Venezuela.[73] Given the pro-Chávez tilt of a number of governments in the region—including those of Ecuador, El Salvador, Bolivia, and Nicaragua[74]—Uribe's Colombia was firmly in the pro-American camp. And Uribe and Chávez had plenty of reasons to feud. Uribe lambasted Chávez's support of Colombian rebels; Chávez criticized Uribe's close ties to Washington and cross-border raids, especially into Ecuador, in pursuit of guerrillas.[75] Uribe's evolution from a friend to bitter opponent of Chávez cemented his relations with Washington.

On 22 November 2003, following the Asia-Pacific Economic Cooperation summit in Chile, Bush stopped off in Cartagena, Colombia, on his way back to the United States. In his appearance with Uribe, the president praised the results of Plan Colombia and promised its continuation:

> We've helped Colombia to strengthen this democracy, to combat drug production, to create a more transparent and effective judicial system, to increase the size and

> professionalism of its military and police forces, to protect human rights and to reduce corruption. Mr. President, you and your government have not let us down. Plan Colombia enjoys wide bipartisan support in my country, and next year I will ask our Congress to renew its support so that this courageous nation can win its war against narco-terrorists.[76]

In 2004, the Bush administration successfully lobbied Congress to relax the caps on the number of U.S. military personnel and contractors permitted to function in Colombia; Congress raised the limits to 800 military and 600 contractors. The U.S. embassy in Bogotá also became one of the largest in the world, with some 2,000 employees representing 32 U.S. government agencies administering various aid and assistance programs. Even the wars in Afghanistan and Iraq did not lead to cutbacks in funds to Colombia; Bogotá remained one of the largest recipients of U.S. aid.

The Bush policy of support for the Uribe administration, however, suffered a setback in 2006 with the unfolding "Para-gate" scandal[77] in Colombia—the revelation that dozens of members of the Colombian Congress as well as regional leaders had ties to the AUC. In particular, the so-called Pact of Ralito was revealed—an agreement back in 2001 between Colombian politicians and the AUC to work for the "re-foundation" of Colombia. The ongoing investigation led eventually not only to members of Uribe's administration but even to his family—his cousin, Mario Uribe Escobar, a former president of Congress, was arrested. Uribe's foreign minister, María Consuelo Araújo, someone intimately involved in the relationship with the United States, was also touched by scandal. Her brother Alvaro, a senator, soon came under suspicion. For months, Uribe was steadfast in his support for his foreign minister, much to the chagrin of several U.S. lawmakers who were concerned about the effects these alleged links to the various paramilitaries have had or potentially could have on Uribe's administration. The foreign minister resigned in February 2007 days after her brother and several other members of the Uribe administration were arrested on suspicion of aiding paramilitary operations.[78]

This reinforced the suspicion of the Uribe administration held in some parts of the U.S. government and in Congress. Senator Leahy once again voiced his displeasure with the Colombian government and with Uribe's administration in particular over how it had initially handled "Para-gate": "This confirms the concerns that many have had for a long time, that the paramilitaries have infiltrated the economic and political establishment of Colombian society. It should give us some pause as to who we are dealing with."[79]

THE 2006 DEADLINE

Plan Colombia had initially been presented to Congress as a six-year plan, and the expectations of some were that U.S. support for and involvement in Colombian operations would end in 2006; General McCaffrey had characterized Plan Colombia as no more than a "five year" effort back in 2000.[80] But a June 2003 report released by the Government Accountability Office (GAO) flatly concluded, "Neither the Colombian Army nor the Colombian National Police have the capacity to manage ongoing counternarcotics programs without continued U.S. funding and contractor support. Colombia's financial resources are

limited and its economy is weak and thus will need U.S. assistance for the foreseeable future."[81] In responding to the GAO report, the Department of Defense acknowledged that it was identifying funds for support of Colombian efforts through FY 2009.[82] A second report, issued in July 2004, examining nonmilitary aid programs, reached similar conclusions: "[T]he government of Colombia does not have the capacity to sustain alternative development projects, provide the level of assistance needed for vulnerable groups, or implement democracy and judicial reform. Colombia's financial resources are limited and its economy is weak, and thus it will need U.S. assistance for the foreseeable future."[83]

Congress began to consider continuation of Plan Colombia programs directly through the Andean Counterdrug Initiative (ACI), which had no statutory ending date.[84] Rather than create another multiyear program, Plan Colombia was effectively subsumed into the ACI.

While some observers in Washington complained that under the Bush administration, the focus of Colombia policy had changed (from counternarcotics to counterinsurgency), some in the U.S. government continued to focus on the drug portfolio. To this end, in March 2006, 50 leaders of the FARC were indicted in the United States for their alleged role in narcotics trafficking in the United States and various human rights violations in Colombia. This was an effort to seriously disrupt FARC narcotics operations and at the time signified the largest indictment in U.S. history involving narcotics trafficking.[85] On the other hand, as Naval War College professor Derek Reveron, a leading American expert on Colombia, has observed, "While Congress initially rejected the [CI] nature of the program, it turns out that's what was executed. When the Bush team invented the term narco-terrorism, it allowed SOUTHCOM to remove the artificial restrictions imposed by the initial legislation."

Moreover, in response to concerns about stymied economic development in Colombia, the Bush administration signaled early in its second term that it would begin to focus more on economic issues as part of its Colombia policy. At her confirmation hearing, Secretary of State–designate Condoleezza Rice testified:

> . . . [W]e are going to have to explore with Colombia its economic development. It is a country that has potential but has really been—a lot of the potential has been held back by the terrible security situation produced by narcotrafficking. And as the narcotrafficking situation is brought under control, we obviously will want to be a partner with Colombia in how they build a vibrant democracy. Part of that is that they have asked us to discuss with them what we might be doing in the area of free trade. I think that's something that we will want to explore with them. Obviously, it has to be seen in the context of what we're trying to do with the Free Trade Area of the Americas. But we've not been shy to go ahead and look at what we might be able to do bilaterally in trade.[86]

Free trade talks had begun with Colombia (and several other Andean nations) in 2004. The U.S.-Colombia Trade Promotion Agreement, as it was officially titled, was signed in November 2006. It would make permanent certain trade exemptions granted to Colombia

(under the Andean Trade Promotion and Drug Eradication Act passed by Congress) and eliminate completely or lower substantially trade barriers in both countries, particularly in agricultural products. The Bush administration argued that the free trade agreement was the logical next step in Plan Colombia:

> The progress Colombia has made is real but critical challenges remain. The terrorist and paramilitary groups are weakened but not defeated. Violence continues to threaten all sectors of Colombian society as well as cause displacement and economic hardship. The people of Colombia are addressing these problems aggressively and decisively, but need the continued help of the United States. The U.S.-Colombia Free Trade Agreement is a critical tool to provide licit jobs and economic alternatives to violence.[87]

The agreement was also promoted as a benefit for the U.S. economy, since Colombia was America's fourth-largest trading partner in Latin America. The free trade pact was enthusiastically endorsed by McCaffrey, one of the architects of the Clinton administration's initial Plan Colombia proposal; McCaffrey argued that "[a]pproving the free-trade agreement would enable Colombia to continue on its positive course."[88]

The Colombian side moved to ratify the agreement quickly; it passed the House and Senate by November 2007 and, after a review by the Supreme Court to ensure its provisions complied with Colombia's constitution, the agreement was formally ratified by the Colombian government. On the U.S. side, however, there were growing concerns. The United States was already running a $3.43 billion trade deficit with Colombia (as of 2005). Labor unions and environmentalists objected to what they saw as weak standards to protect the rights of workers and to protect the environment; labor unions and some U.S. industries also were concerned about the potential loss of jobs. Finally, the continued human rights concerns about the security practices of the Uribe government, including the assassinations of labor activists in Colombia, did not sit well with U.S. unions.[89] The president of the AFL-CIO, John Sweeney, bluntly declared: "Colombia's atrocious human rights record sets it apart from the rest of the world. There is no labor language that could be inserted into the U.S.-Colombia FTA [free trade agreement] that could adequately address the extraordinary—and unpunished—violence confronting trade unionists in that country."[90]

Representative Sander Levin (D-MI) made it clear why the Bush administration would face an uphill battle to get the free trade agreement ratified in Congress: "[The] Colombia [free trade agreement] cannot pass the Congress, as constructed, and Plan Colombia is in more jeopardy because of these scandals, the infiltration of the paramilitary into the inner workings of the Colombian government. . . . I voted for Plan Colombia, at least the first few times, but this is a very worrisome development."[91]

Because Uribe had cultivated such close ties to the Bush administration, he found Congress—now controlled by Democrats as a result of the 2006 midterm elections—much less accommodating. The new Speaker of the House, Nancy Pelosi, raised her concerns about the "Para-gate" scandal and, in contrast to President Bush's warm and effusive welcome, congressional Democrats were far more disapproving of Uribe's record. José Miguel

Vivanco of Human Rights Watch summed it up: "During the period that the Republican Party controlled both Congress and the White House, he got a free ride. But now concrete questions about his record are on the table. He has to give them some reasonable answers."[92]

President Bush made a major visit to Latin America in March 2007 in an effort to rekindle relationships in the region that many perceived as having been ignored since 9/11 and the wars in Iraq and Afghanistan. He also hoped to reverse a trend in public opinion polling in the region that indicated a steady decline in perceptions of relations with the United States and Bush's overall performance every year since 2001. Bush arrived in Bogotá, considered the most dangerous stopover on his trip, under heavy escort. Nevertheless, he pointed to the great strides in security that have been made over the last four years and pledged continued support. Additionally, Bush introduced new educational, housing, and economic programs, and after his visit, a U.S. Navy medical ship arrived in June 2007 to provide health services to a dozen countries in the region.[93]

As the Bush administration prepared to leave office, the GAO prepared an assessment of Plan Colombia. The United States had provided some $4.9 billion in security assistance and another $1.3 billion in nonmilitary aid since the inception of the plan in FY 2000. As a counternarcotics strategy—the initial motivation for Plan Colombia—the results were mixed. Opium poppy cultivation and heroin production declined about 50 percent, but cocaine production levels actually increased, by 4 percent. The report found that the country's overall security climate had improved, but that economic and social development aid was not reaching most areas where coca is cultivated, in part because these were the areas where security was the weakest.[94] So the report's findings were mixed; some successes, but also failures, were reported. This also had an impact in continuing the debate over the efficacy of the aerial fumigation efforts to disrupt coca production, given the environmental trade-offs.

In 2007, the Uribe administration launched a successor operation to Plan Patriota—Plan Consolidation—where the Colombian military focused on not only fighting the guerrillas but clearing and holding formerly FARC-controlled territories. In 2008, there were also some spectacular successes—the ambush and death of FARC second-in-command Raul Reyes and the rescue of some of the most important hostages held by the FARC, including former presidential candidate Ingrid Betancourt. But the FARC had not been completely defeated, and in December 2009 successfully kidnapped and then killed the governor of the Department of Caquetá (a region southeast of Bogotá).[95]

President Bush never wavered in his support for the Uribe administration and pointed to the gains that had been made in recent years in Colombia regarding paramilitary demobilization and increases in security, stability, and economic development. Bush awarded Uribe the Presidential Medal of Freedom in January 2009, shortly before stepping down from office.

Reveron notes that the government of Colombia, during this period, took major steps in improving internal security, and that U.S. efforts, particularly to train and equip, were

successful because the Americans, especially those in SOUTHCOM, found willing and able partners in the Colombian government, military, and police. Assessing Plan Colombia's success or failure depends therefore on the standards being applied. As Reveron concludes: "If it is to be judged by stemming the flow of drugs, it is a failure. If it's to be judged by preventing state failure and supporting a fragile democracy, it is a success."

SENATOR OBAMA'S INITIAL POSITIONS . . . AND THE OBAMA ADMINISTRATION'S POLICIES

While Colombia was not a major issue of concern to Senator Barack Obama after his arrival in Washington in 2005, it did appear that he was somewhat skeptical of President Bush's approach. In early 2006, Obama joined with Senators Leahy and Dodd, two persistent critics of the Bush administration approach to Colombia, in writing a letter to then–under secretary of state R. Nicholas Burns, questioning whether "Plan Colombia" was working. The senators noted, "There are reasons to be seriously concerned about whether our current policy can achieve its goals."[96] A year later, Obama again joined with Leahy and Dodd to demand that the Uribe administration work harder to reverse the "infiltration" of the paramilitaries into his government or else put at risk $700 million in U.S. aid.[97] But Obama stopped short of joining other senators who were demanding that the State Department refuse to certify that Colombia was meeting human rights standards, a condition for continued U.S. assistance. Instead, as one report from a liberal think tank (the Council on Hemispheric Affairs) concluded, Obama was limited in his opposition: "The Illinois Senator needs to do more than simply offer up polite and diplomatic protestations to the Bush White House and must come up with a plan of his own."[98]

As the 2008 presidential campaign moved into higher gear, Obama began to hone his position on Colombia. While retaining his concern for human rights abuses, he did voice support for the counterdrug and antiterrorism components of Plan Colombia. However, he did not endorse the proposed free trade agreement with Colombia, raising concerns about adequate standards for protecting the environment and the rights of labor unions—and also taking advantage of a growing skepticism among the American public about the value of free trade to U.S. prosperity.[99]

The Obama campaign did try to play up differences with the Republican nominee, Senator, John McCain. In a conference call to reporters, Obama spokesmen described McCain's support for Plan Colombia as a sign he would be "Bush 3" (i.e., a third term of the Bush administration) and, while acknowledging that Plan Colombia had "some successes," they stressed that a future Obama administration would "try a very different kind of approach and develop an integrated strategy."[100] (Two of the call's participants have since moved into the Obama administration: Denis McDonough is the chief of staff at the National Security Council, and Dan Restrepo is senior director at the National Security Council for Latin America.)

The official fact sheet released by the campaign opened with a general statement about breaking with the "failed policies of the past" but when it came to Colombia policy it wasn't

clear what was being designated as a failure. This document expressed candidate Obama's opposition to the free trade agreement with Colombia as negotiated by President Bush but was more ambivalent about security and military assistance. It did not go into specifics about changes a future Obama administration might make in the Bush approach to Colombia other than to state, "We need to continue efforts to support Colombia in a way that also advances our interests and is true to our values." It did endorse Colombia's right to strike at FARC encampments and installations even in cross-border safe havens, but also called for a policy of engagement with Venezuela.[101] But it did not make more detailed policy pronouncements.

For his part, the Republican nominee for president in 2008, Arizona senator John McCain, made it clear that he would continue the Bush policies on Colombia (even though he had expressed some doubts back in 2001). He stated quite clearly, "I intend to fight for Plan Colombia and for a free trade pact with Colombia" and warned that the successes achieved in that country "are endangered by Democrats who oppose providing military aid to a democracy under siege and want to turn their back on the free trade agreement negotiated with our strongest ally in Latin America."[102] McCain's implication, of course, was that should a Democrat be elected to the White House, there would be major reversals in U.S. policy toward Colombia.

There was a wide divergence in expectations: some Obama supporters, focusing on promises of change from the "failed policies of the past," were expecting radical breaks with the Bush legacy. Other observers, like Julia Sweig, a senior fellow on Latin America at the Council on Foreign Relations, pointed out that when it came to Plan Colombia, "the two senators are roughly in sync"[103]—which indicated that perhaps there was a greater bipartisan consensus on the issue than election-time rhetoric would suggest. Sweig's conclusions were echoed by Peter DeShazo, who served in the first term of the George W. Bush administration as deputy assistant secretary of state for Western Hemisphere affairs: "There will be greater continuity than a lot of people expected. Those who expected a sea change were misleading themselves." DeShazo noted this is because U.S. interests had not fundamentally changed in Latin America just because of the transition from one administration to the next.[104]

When it came to Colombia, the Obama administration sent signals in the first months that suggested that there would be shifts. Gil Kerlikowske, Obama's appointee to head the White House Office of National Drug Control Policy, talked about retiring the entire "war on drugs" moniker and said greater emphasis would be placed on a strategy of reducing demand in the United States for illicit narcotics, especially through treatment.[105] Some interpreted this to mean a reduction in the focus on the military in counternarcotics policy. Obama's own calls for a "new partnership" between Latin America and the United States, well received at the Summit of the Americas in April 2009, also suggested the administration would take a different approach from its predecessor.[106]

But it soon became apparent that the United States under the Obama administration was not going to abandon Plan Colombia. The administration's requests for appropriations for

Plan Colombia in Fiscal Year 2010 reflected only a slight decrease from what the Obama administration had requested and received in 2009; the White House noted that its funding requests were designed "to consolidate progress achieved under Plan Colombia while supporting the transition of additional counternarcotics programs to the Government of Colombia. Assistance will continue to support aviation programs that support eradication, interdiction, humanitarian and high-value target operations, and provide the Colombian military and police the capability to operate in remote regions."[107]

The Obama team has indicated that its goal—which it says has always been consistent since the beginning of Plan Colombia—is an eventual "Colombianization" of efforts, with a gradual reduction in the amount of U.S. aid.[108] Indeed, as Reveron has observed, the gains made by the Colombians under Plans Patriota and Consolidation make it more likely that conditions will permit a handover to Bogotá.

In addition, the Obama administration reached a formal agreement with the Colombian government to guarantee access for U.S. personnel to seven bases in Colombia. Having lost the lease on the Manta facility in Ecuador, which allowed U.S. counterdrug operations to base planes and ships to interdict Colombian drug shipments headed into the Pacific Ocean, the administration, according to the State Department, wanted to take a series of understandings reached on "an ad-hoc basis" and to make the arrangements more formal; the accord also "removes bureaucratic hurdles" to the U.S. presence in Colombia. Nevertheless, the State Department argued that there would be no increase in the numbers of U.S. personnel in Colombia, and Obama himself said that the agreement was not a prelude to the establishment of any permanent U.S. base in Colombia; instead, this was a "continuation of assistance that we had been providing them." This included new funds for refurbishing the bases, which will now serve as the basis for the U.S. antinarcotics efforts throughout South America.[109]

But the deal was criticized by Obama's former Senate colleagues Dodd and Leahy, who questioned Secretary of State Hillary Clinton why Congress had not been consulted about the plan and expressed concern that the administration was deepening military ties with a country with significant human rights problems.[110] In September, several members of the House of Representatives wrote to Obama to express their disappointment with the deal; calling Plan Colombia "a failure," they worried that Obama was going to be funding additional military efforts without paying attention to human rights. What made this missive significant is that some of the signatories, among them Representative Jan Schakowsky, had been significant supporters of Obama during the campaign. And just as he did during the Republican George W. Bush administration, Senator Leahy attached amendments to the bills for funding Plan Colombia to try and address human rights concerns, even though these budget requests were now coming from the administration of his fellow Democrat Barack Obama.[111]

But the Obama administration, in keeping with its campaign promises, did not push for ratification of the free trade agreement. Labor unions, a bulwark of support for any Democratic administration, signaled their staunch opposition to the deal in its current form.

House Speaker Nancy Pelosi had no intent to bring the agreement up for a vote at any point in 2009. When President Uribe visited the White House in June 2009, all the president would concede was that a "compromise could be reached," perhaps through renegotiation of key provisions, but otherwise, Obama did not move to support passage.[112] Yet, in December 2009, Republican lawmakers stated, after a private meeting with the president, that Obama had signaled he "supported moving forward" on the stalled FTA with Colombia.[113] But in January 2010, U.S. Trade Representative Ron Kirk could offer no timeline for this process. Noting that the president remains committed to ensuring that any free trade agreement contains strong standards for "workers' rights, fair market access and environmental stewardship," Kirk said that the submission of agreements for congressional consideration would depend on the progress of negotiations designed to address these concerns.[114]

The tone of the relationship has also changed. The Uribe administration, while not snubbed by the Obama team, has nonetheless come under greater criticism (some of it directed in private) for its handling of domestic policy. In addition, the Obama strategy for Latin America is to try and rebuild ties with many nations, potentially diminishing Colombia's importance to U.S. policy. If Uribe was embraced by the Bush White House, he is now learning to live with a "more guarded approach" from President Obama.[115] McCabe has observed on recent visits to the country that there is real concern that the Obama administration is backing away from support for Bogotá, especially in its continuing problems with Venezuela, and the Colombians worry about a possible reorientation in U.S. policy.

But can apparent discontinuities and breaks with the Bush administration policy on Colombia be attributed solely to presidential wishes or differences in worldview between the two administrations? Senator Leahy, who spent years trying to curtail Plan Colombia, now sees the possibility of leaner times in the United States affecting the policy. In an interview with a Colombian newspaper, he pointed out that "with the financial crisis I expect U.S. aid to decrease. After nine years and $8 billion in U.S. aid, it is time for Colombia to pay more of the cost."[116] Stephanie Miller, a consultant on U.S.–Latin America relations, points out that the Obama administration has to take into account "an economic recession, wars in Iraq and Afghanistan, and an ever-increasing allocation of resources to help Mexico deal with rising narcotics-related violence" when it considers how much it is prepared to spend on Colombia.[117]

What accounts for the degree of continuity in Colombia policy between the Bush and Obama administrations? William LeoGrande, dean of the School of Public Affairs at American University in Washington, DC, sees a "greater structural problem" at work:

> The fact is, every administration comes in promising a new policy toward Latin America, and none of them, with the exception of Ronald Reagan, ever have one. They all had to cope with much more pressing problems elsewhere in the world.

> So Latin America policy is sort of on autopilot, because (the top officials) don't have time to focus on it, and the assistant secretaries don't have the authority to make fundamental changes.[118]

LeoGrande's argument, that policies enacted by a previous administration will remain "on autopilot" until specifically addressed by the new one, is complemented by another one: the presence in the Obama administration of key figures who helped to enact and promote Plan Colombia during the Bush years is also a factor for continuity. In the absence of any explicit directives from the president to make radical changes to Colombia policy, the Pentagon was going to continue with its programs. It also helped that both Robert Gates, retained as secretary of defense in the Obama cabinet, and Admiral Mike Mullen, chairman of the Joint Chiefs of Staff, have been strong supporters of Plan Colombia. (Gates's support of the Colombian free trade agreement, however, has not been as strong of an influence on the new administration's position.)[119] To the extent that Colombia has been cited as a successful precedent for the new operations under way in Afghanistan, there is also no desire to have the policy reversed.[120] And even though Arturo Valenzuela, Obama's pick to be assistant secretary of state for Western Hemisphere affairs, was not confirmed until November 2009, his nomination also represented continuity with the Clinton administration's approach, since Valenzuela served as senior director for inter-American affairs at the National Security Council and played a major role in the formulation of the original Plan Colombia proposal.[121]

But there is another, intriguing theory about Obama's foreign policy—the so-called nudge thesis. This approach argues that Obama is making small, incremental changes to policy that, over time, can produce a major shift.[122] Applied to Colombia policy, the "nudge" approach would predict gradual reductions in military aid, rather than a sudden, dramatic cut, in order to encourage greater "Colombianization" and disengage the United States from involvement in the counterinsurgency campaign.

A string of continued successes in Colombia has also made it easier for the administration to claim ownership of the existing policy. David Johnson, the assistant secretary for international narcotics and law enforcement affairs, acknowledged that while Colombia remains a "major producer" of cocaine, there continue to be "significant declines" in the amount being shipped northward, helping to validate the premise of the original CN mission.[123]

Plan Colombia was conceived in the latter half of the second term of the Clinton administration and was born as policy on the basis of bipartisan support in Congress and the emergence of a credible partner as president of Colombia. During the presidency of George W. Bush, it moved from being viewed as "just" a counternarcotics program into one of the fronts in the fight against global terrorism and a vital component of the president's "freedom agenda." The Bush administration invested a good deal of resources in the successes of the Uribe government. Now the policy—which has acquired a great deal of institutional staying power over the course of a decade—has been bequeathed to a new administration, which must decide what it plans to keep and what it plans to discard.

Notes

Unless otherwise noted, all hyperlinks were accurate and active as of 8 March 2010.

1. The original case was written by David Buckwalter and subsequently revised by Dana Struckman. The case was substantially revised and edited as well as updated for the 2010 version. The contributions and advice of two other Naval War College professors, Derek Reveron and Laurence McCabe, to this updated version of the study are also gratefully acknowledged.
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Cuba after the Castros—What Next?

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Fidel Castro has been the United States' most implacable opponent in the Western Hemisphere for more than fifty years. Since the Eisenhower administration, Castro has challenged and survived the coercive foreign policies and actions of ten U.S. presidents. Spanning the spectrum from covert assassination attempts (Castro claims to have survived more than 600 attempts by the CIA to kill him) to an amphibious invasion by paramilitary forces to one of the longest-running economic embargoes, U.S. policy toward Cuba has done little to change the status quo. Nor has "waiting out the clock" been an effective strategy. While many assumed that Castro's government would be on its last legs following the collapse of the Soviet Union in 1991, the Cuban regime not only survived the demise of its superpower patron but has enjoyed a resurgence of sorts, forging new ties with Venezuela and Brazil and benefiting from a return of leftist governments to power throughout Latin America. Fidel Castro took power as prime minister in 1959, merged that office with the presidency in 1976, and, due to ill health, voluntarily retired from the presidency in 2008 (although he remains the first secretary of the Cuban Communist Party). His brother Raul, who became acting president in 2006, was inaugurated as the 23rd president of Cuba in 2008.

Faced with a (partial) succession of power, the outgoing George W. Bush administration and now the Barack Obama administration must grapple with two interrelated questions. The first is whether, after six decades of a policy designed to isolate and eventually change the regime, it is time to begin a strategy of engagement. The second is whether what Fidel Castro has created and Raul Castro is endeavoring to maintain in Cuba has any staying power after both men pass on. By examining the current situation in Cuba, and Castro's ability to maintain power for decades in spite of persistent U.S. efforts to remove him, policy makers can better anticipate the forces that will influence a Cuban succession, and subsequent future U.S. policy.

CUBA AND THE UNITED STATES DURING THE COLD WAR

One hundred years ago, Cuba was a virtual protectorate of the United States, a consequence of the so-called Platt Amendment, written into the country's constitution after the island gained its independence following the Spanish-American War in 1898. It permitted the United States to lease lands for naval bases like Guantanamo Bay. It also required the Cuban government to consent to the right of the United States to intervene in Cuban affairs to preserve Cuban independence, and to protect life, property, and individual liberty. Cuban nationalists viewed the Platt Amendment as an imperialist infringement of their

sovereignty. By 1934 widespread criticism and Cuban popular discontent over the agreement led Franklin D. Roosevelt, as part of his Good Neighbor policy toward Latin America, to repeal the Platt Amendment (while maintaining the perpetual lease on Guantanamo Bay).[1]

Social discontent within Cuba swelled and abated throughout the 1930s, 1940s, and 1950s. Bribery and corruption among political leaders and the unequal distribution of wealth generated from the sugar trade with the United States fueled popular dissatisfaction.[2] Cuban dictator and president Fulgencio Batista (who ruled through a number of puppet presidents and himself took power directly twice) was unable to address these issues. But Batista promised to keep order on the island—an important consideration for U.S. businesses who were heavily invested in Cuba—and he was strongly anticommunist, which mattered a great deal to Washington as the Cold War with the Soviet Union got under way. Batista might be an unsavory, corrupt figure, but he was prepared to work closely with the United States. William Wieland, at the Caribbean desk of the State Department during the Eisenhower administration, put it bluntly: "I know Batista is considered by many as a son of a bitch . . . but American interests come first. . . . [A]t least he was our son of a bitch, he is not playing ball with the communists."[3]

One of the rebels against Batista's rule was a young student, Fidel Castro. On 26 July 1953, he led a failed attack on the army's Moncado barracks at Santiago de Cuba where more than one hundred people died. Castro went to jail but was later released by Batista in a surprising act of clemency. The aspiring rebel leader went into exile in Mexico, where he organized the "26th of July Movement" with the goal of overthrowing Batista.[4] Returning to Cuba in December 1956 with an expedition of 80 men, Castro immediately took refuge in the Sierra Maestra and began his insurrection. Castro returned to find an environment of even greater popular discontent and rising numbers of resistance groups, both elements crucial to his movement. Defections from Batista's army also aided Castro's guerrilla insurrection and drastically weakened Batista's hold on power.[5]

Batista, faced with widespread dissatisfaction with his dictatorial rule, fled the island on 1 January 1959 with millions of dollars stashed in Swiss bank accounts. Fidel Castro entered Havana eight days later, assuming the role of commander in chief. Two months later, he took over as prime minister. Promising a return to constitutional rule, democratic elections, and social reforms, Castro initially appeared to the Eisenhower administration as an acceptable alternative to Batista.[6]

But relations with the United States deteriorated rapidly beginning in May 1959 when the Castro regime began expropriating U.S. properties, nationalizing Cuban and non-Cuban industries, collectivizing agriculture, and buying oil from the Soviet Union. When U.S. refineries in Cuba refused to process the oil, Castro expropriated the refineries. President Dwight D. Eisenhower in response imposed an economic embargo on Cuba in October 1960 and broke diplomatic relations with the island nation on 3 January 1961, just weeks before John F. Kennedy's inauguration as president. Castro's actions alienated many of his

former supporters, particularly in the middle and upper classes. Many of them fled to the United States, where they formed a vocal anti-Castro Cuban American lobby group.

At this point, it is important to note that the "Cuba lobby" has emerged as one of the most powerful "ethnic lobbies" in U.S. foreign policy.[7] Centered in south Florida and in New Jersey (with significant communities found elsewhere in the United States), the Cuban diaspora, largely made up of elite, educated business owners and politicians, was able to build an economic and political community while maintaining its cultural identity and singular political focus of freeing its homeland from communism and the rule of the Castros. Initially, the anti-Castro lobby gained influence because the Cuban community was a cohesive voting bloc in several congressional districts. Over time, Cuban Americans began to enter U.S. politics themselves, both by winning local and state elections and by gaining executive branch appointments, giving them the opportunity to shape Cuba policy. Significantly, the Cuban American leadership has been able to mobilize the community to remain energized as a cohesive voting bloc around its core issues—especially opposition to any sort of U.S. normalization of relations with Castro's Cuba. The formation of the Cuban American National Foundation (CANF) in Miami in 1981 by Jorge Mas Canosa and Raul Masvidal created a powerful, unified anti-Castro organization that coordinated the activities of the Cuba lobby.[8]

Severing relations, however, was not enough; Eisenhower also sought more forceful options to remove Castro. The CIA, having enjoyed previous successes overthrowing anti-U.S. regimes in Guatemala and Iran, presented Eisenhower with "A Program of Covert Action against the Castro Regime." The plan called for secretly organizing a guerrilla movement of Cuban exiles to conduct infiltration, sabotage, and propaganda operations. Assassination of regime leaders was considered a possible outcome.[9] The CIA operation never achieved much success.

The CIA then modified its covert plan and began recruiting and training a brigade of Cuban exiles capable of amphibious invasion. The CIA also conducted talks with organized crime leaders like Johnny Roselli and Sam Giancana to sponsor an assassination of Castro. The CIA viewed the Mafia as a reasonable partner since the latter had ties with the gambling casinos in Cuba, which had thrived under Batista and been expropriated by Castro. The Mafia would have gained by assassinating Castro, and the CIA would have plausible deniability. Richard Bissell, the director of covert plans for the CIA, determined that working with the Mafia to assassinate Castro was acceptable because "the end justified the means."[10]

In an event that would initiate and enlighten the new Kennedy administration, President John F. Kennedy, on the advice of his advisors, gave the execute order for the CIA's ill-fated Bay of Pigs invasion. On 17 April 1961, a brigade of approximately 1,400 CIA-financed and -trained Cuban exiles landed on Playa Girón on the Bay of Pigs. The administration naïvely assumed the invasion would spark a popular uprising and bring down the Castro regime while allowing the administration to maintain plausible deniability of U.S. involvement, even

though the CIA had not coordinated with any Cuban dissident groups on the island for such a plan. Instead, the attack faltered when it faced superior resistance from Castro's forces, and eventually failed when ammunition and supplies were exhausted. Castro announced that total victory had been won against "American imperialism," and proclaimed Cuba a socialist state. He began pursuing openly a deepening relationship with the Soviet Union.

Defeat for the Kennedy administration did not change its policy toward Castro. Ruling out another invasion attempt, Kennedy asked Edward Lansdale, who worked for the deputy secretary of defense, to provide him with options to depose Castro. Lansdale concocted and launched Operation Mongoose, a plan similar to the original CIA plan to train and organize exiles for insurrection in Cuba. This time Robert Kennedy, the attorney general and president's brother, would assume almost total control of the operation. Operation Mongoose was more ambitious than the Bay of Pigs. It involved more personnel and targeted raids on industrial facilities, petroleum refineries, and storage tanks. Lansdale also brought in CIA operatives to assist with executing the plan. These operatives brought with them their contacts with the Mafia and their scheme to assassinate Castro. The operation thus included multiple attempts to kill the Cuban leader. These attempts included poisoning his favorite cigars and presenting him with a booby-trapped fountain pen, to name but a few.[11]

The culminating showdown over Cuba for Kennedy came in October 1962 when a U-2 high-altitude spy plane photographed Soviet medium-range ballistic missiles on Cuban soil. These missiles were assessed capable of delivering a nuclear payload but were not yet operational. For the next thirteen days, the world stood on the brink of nuclear war as Kennedy and his advisors considered a range of diplomatic and military responses to the grave threat. Kennedy ultimately decided on a naval blockade of Cuba to force a diplomatic solution with Khrushchev. After a suspenseful standoff and tense period of secret negotiations, Khrushchev finally conceded to U.S. demands to remove the missiles, but only after the United States promised never to invade the island (as well as secretly removing obsolete NATO nuclear missiles from Turkey).

Since that point in time, the United States has focused on more passive attempts at "regime change," mainly through economic pressure. The U.S. trade embargo against Cuba has its origins in an Eisenhower administration policy from March 1960 in which the president ordered an end to sugar purchases and oil sales. Kennedy expanded the embargo by a series of executive orders that banned trade and commerce and forbade Americans to travel to the island. In 1964 the Organization of American States (OAS) also imposed trade sanctions against Cuba (which were not lifted until 1975). Some U.S. sanctions lapsed in 1977 but President Ronald Reagan reissued executive orders continuing the embargo. The United States also engaged in the "war of ideas" with Cuba. In 1983, Reagan authorized the creation of Radio Martí at the urging of Jorge Mas Canosa, the head of the powerful Cuban American National Foundation, which broadcasts 24 hours of news and other programs. In 1990, a television station was created as well.

In the aftermath of the Cuban Missile Crisis, Castro's Cuba moved fully into the orbit of the Soviet Union; as an outpost of Soviet influence in the Western Hemisphere, ninety

miles from U.S. shores, Cuba was "the jewel in the Soviet Union's crown."[12] The Soviet Union provided Cuba with economic aid in the form of favorable prices on sugar imports and oil exports. Soviet largesse also helped Cuba survive in the face of U.S. economic embargoes and hemispheric isolation. From 1986 to 1990, Soviet economic assistance composed 21 percent of Cuba's gross domestic product ($4.3 to $6 billion annually).[13]

With Soviet economic and military assistance, Castro could fulfill his social contract with the Cuban people. He provided the Cuban people with free health care and education, low-cost housing, subsidized food rations, state employment, early retirement, and a pension. He raised the standard of living for many on the island and provided education and employment opportunities to the previously ignored black and mulatto populations. Despite a growing diaspora and internal opposition, he continued to enjoy wide popular support, particularly among the "Afro-Cuban" segment of the Cuban population.[14]

Meanwhile, Castro built a powerful state apparatus to completely control the Cuban people. Through its state and party organs, it penetrated deeply into Cuban society, far greater than previous authoritarian regimes in Cuba. In exchange for socialism, the Cuban people forfeited many basic freedoms. The Cuban people did not have freedom of speech or assembly, or right of association. Cubans did not have the right to change their government, and due process was often denied in cases involving political offenses. Human rights groups were not welcome in Cuba and are seen as a threat to sovereignty. Castro declared Cuba an atheist state and in 1962 shut down more than 400 Catholic schools. (In 1991 Castro lifted his prohibition on religion, but churches now operate under significant government pressure.) The charismatic Castro used ultranationalist rhetoric and defiant postures against the United States to constantly manipulate public support and keep the Cuban people in a permanent state of tension and mobilization.

A key center of power for Castro—and one of the most "respected" institutions in Cuban society—was the Revolutionary Armed Forces (Fuerzas Armadas Revolucionarias, FAR). Considered the only "meritocracy" in the Castro government, the FAR's low- and mid-grade officers historically were promoted based on competence and achievement instead of political connections. Born from Castro's victorious guerrilla army, the FAR has always enjoyed a positive civil-military relationship. Unlike many Central and South American countries, "there has never been even a hint of military coup plotting or conspiracy against Castro, who has always managed to portray himself simultaneously as both a civilian and military leader." In 1989, the police, intelligence, and security services of the Ministry of Interior came under control of the FAR. The FAR now owns an absolute monopoly on coercive power in Cuba.[15]

Massive Soviet military assistance in the 1970s and 1980s significantly increased the FAR's capability and enabled Cuba to project power abroad. As a result, the Soviets used the Cuban military to fight proxy wars in Angola and the Horn of Africa to advance Soviet interests. Military successes in the Bay of Pigs and expeditions in Africa bolstered the FAR's reputation worldwide. By 1987 Cuba maintained the largest military in Latin America, while ranking 20th in size among the world's militaries. Furthermore, many believed that Cuba's

military was perhaps the best trained and most experienced fighting force of any small nation, with the exception of Israel, in the world.[16]

Throughout the 1970s and 1980s, Castro was a thorn in the side of successive U.S. administrations. Cuban adventurism (with Soviet backing) in El Salvador, Grenada, Guatemala, and Nicaragua turned Latin America into a frequent battleground of the Cold War. Castro appeared to be "pollinating" his revolution by backing guerrilla movements elsewhere in the hemisphere; his biggest triumph came in 1979 when the Sandinistas overthrew the pro-U.S. dictatorship of Anastasio Somoza in Nicaragua. Pro-Castro leftists also came to power in the Caribbean island nation of Grenada.

Meanwhile, Castro removed a major threat to his rule at home and "dumped his problems" on the United States. Growing dissent in Cuba resulting from the loss of basic freedoms and fueled by housing and job shortages eventually climaxed in 1980 when hundreds of Cubans stormed the Peruvian embassy in Havana seeking asylum. Castro's response alarmed the Carter administration when he announced that "any Cuban who wishes to leave the island is free to do so." Thus began the Mariel boatlift, which brought over 124,000 undocumented Cuban migrants into south Florida. The refugees were processed through hastily established detention centers around the country. Castro took the opportunity to purge his prisons and asylums and to deport dissenters. The boatlift proved to be a foreign policy disaster for President Carter.[17]

The U.S. military action in Grenada in 1983, however, was a critical setback for Castro. Not only was a pro-Castro regime removed, but the open use of U.S. military power caused the Soviets, in the words of an interagency intelligence assessment, to "reinforce their admonitions to Cuba against undertaking actions that might lead to a Cuban confrontation with the United States."[18]

AFTER THE SOVIET COLLAPSE

Soviet subsidies to Cuba ended with the collapse of the USSR in 1991. The Soviet demise forced dramatic change on the Cuban military and severely strained the Castro regime. The idea of communism, on which Castro staked his legitimacy, had just been rejected by Cuba's greatest ally. To make matters worse for the regime, the Cuban economy plunged between 35 percent and 50 percent following the breakup of the USSR. The severe economic conditions of the 1990s forced Castro to initiate limited economic reforms in order to bring in hard currency. Castro realized he could no longer quell political dissent with only ideological rhetoric after the fall of communism. He had to find a way to fund his massive social programs in order to assuage popular discontent.[19]

In 1993 and 1994 he opened up the tourist industry, allowed foreign investment, legalized the U.S. dollar, and authorized self-employment for certain occupations. These reforms resulted in modest economic growth and a new private sector of about 209,000 workers. Another large source of hard currency poured into the island from remittances. Most remittances come from Cuba's diaspora living in the United States, estimated between $600 million and $1 billion annually. Cuba also marketed itself as a world-class destination

for medical treatment. Medical tourism attracts patients mainly from Central America and generates revenues in excess of $40 million annually. However, one analysis concluded, "Cubans have . . . been denied first-rate health care, which is reserved for hard-currency-paying foreigners, who are lured to the island under the government's policy of 'medical tourism.'"[20]

In an effort to secure the loyalty of the military during this period of adversity, the Castro regime handed over the management of many state enterprises to the FAR in order to give its members access to higher incomes and hard currency. Much of the FAR's officer class now controls many privately run state-owned sectors of the economy such as tourism, foreign investment, civil aviation, sugar production, and cigar and tobacco marketing. By granting officers access to higher incomes, Castro has created vested stakeholders in the regime. Cuban experts speculate that Castro's "spontaneous privatization" (bestowing state assets on loyal officers of the regime without their investing financial or human capital in these enterprises) has created corruption among the FAR and divisions within the military between the professional soldier and the entrepreneur-soldier.[21]

Access to dollars also created inequalities within Cuban society and ran counter to Cuba's Marxist ideology. The standard of living was higher for those Cubans with access to U.S. dollars (tourism sector and remittances) than for those who remained in the traditional economy. As a result, "It is not uncommon to see doctors, engineers, scientists, and other professionals working in restaurants or as taxi drivers."[22] Average Cubans began to see themselves as second-class citizens in their own country. This fueled rising popular discontent.

Was Castro's regime on its last legs? The George H. W. Bush administration issued an executive order ending any covert activities on the island, but Congress was eager to push the Castro government into the ashbin of history, in the footsteps of its Soviet patron. In 1992 U.S. congressman Robert Torricelli of New Jersey introduced the Cuban Democracy Act (CDA) with the intent that it would bring down Castro "within weeks"; the legislation was drafted with strong input from Jorge Mas Canosa. Endorsed by presidential candidate Bill Clinton, and passed by strong majorities in both houses of Congress, the CDA was signed into law by President Bush. The legislation tightened an existing loophole in the U.S. embargo by now prohibiting foreign-based subsidiaries of U.S. firms from engaging in trade with Cuba, and also placed new restrictions on the amount of money Cuban Americans could send to their relatives on the island.[23]

The deteriorating economic situation of the early 1990s sparked another mass exodus of undocumented Cubans attempting to reach U.S. shores—the *balsero*/rafter crisis. (The Clinton administration simultaneously faced a similar situation with Haiti.) At the height of the crisis in April 1994, the U.S. Coast Guard initiated its "Cuban Mass Migration Emergency Response Plan" named Operation Able Vigil to interdict Cuban migrants at sea. To discourage illegal immigration, President Clinton announced a new policy prohibiting undocumented Cubans from entering the United States and directed they be transported to "safe havens" outside the United States. The Department of Defense became involved one

day later, directing the armed services to establish and secure holding camps in Panama and at the U.S. naval base at Guantanamo Bay (GTMO) and transport the migrants to these camps. The U.S. Coast Guard interdicted over 30,000 Cuban and 25,000 Haitian migrants during this operation. The migrant population on GTMO peaked at 45,000 by September 1994. By most accounts, the conditions in the migrant camps were deplorable, worse than in Cuba. When Castro threatened to unleash another wave of migrants in the summer of 1995, Clinton conceded and allowed most of the migrants from GTMO to enter the United States. The last Cuban migrant family left GTMO on 31 January 1996. Once again, Castro had defused a volatile situation by allowing those most eager to leave to depart. At the same time, the United States changed its policy pertaining to Cubans attempting to leave the island and migrate to the United States. Cubans historically were classified as political refugees as provided for under the Cuban Adjustment Act of 1966, but President Clinton reversed that policy in an effort to stop the illegal migration. The policy became known as the "feet wet, feet dry" policy. Those Cubans who make it to U.S. shores have the opportunity to gain citizenship, while those picked up at sea are returned to Cuba or a third country. The policy is intended to deter mass illegal migration by sea and quickly return undocumented migrants without incurring the costly process of repatriation had they successfully entered the United States.[24]

With Castro's regime showing no signs of implosion, a new debate started about the efficacy of sanctions. Why was the United States continuing to prohibit trade with Cuba when the United States engaged in trade with the Soviet Union throughout the Cold War? The Clinton administration had already begun the normalization of U.S. relations with another communist state and Cold War adversary, Vietnam; what was the logic of continuing with the isolation of Castro's Cuba? Additionally, opponents of the embargo pointed to the deleterious effect of the ban on the life of the average Cuban citizen, and argued that the United States was more likely to bring about political change on the island through economic engagement.

The Clinton administration therefore began to explore ways to ease sanctions on Cuba, under a policy guideline described by then secretary of state Warren Christopher as a "calibrated response"—offering incentives for continued reform. But after the 1994 midterm elections, Congress was now controlled by the Republican Party, lessening Clinton's leverage; in addition, the Cuban lobby was incensed by Clinton's apparent recognition of Castro's government in terms of agreements reached to handle the *balsero* situation.

On 24 February 1996 the Cuban air force shot down two private planes operated by a Cuban expatriate group called "Brothers to the Rescue," killing four Cuban Americans. The pilots were searching for Cuban rafters trying to reach the United States just outside Cuba's territorial limits (the location is disputed by Cuba). "Brothers to the Rescue" had been credited with saving many lives and has the support of the U.S. Coast Guard. The organization was founded in 1991 by Jose Basulto, an exile trained by the CIA for the Bay of Pigs invasion and other CIA operations in Cuba in the early 1960s. Basulto and his organization also used their planes in the past to drop leaflets and religious medals over Cuba. These actions and

their founder's past link to the CIA may have prompted Castro to take the action he did against the two aircraft.[25]

Following the shoot-down, Congress immediately reversed support for easing sanctions on Cuba and instead passed the Helms-Burton Act (also known as the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act), which not only toughened sanctions on Cuba but also sought to punish non-U.S. companies for engaging in trade with Cuba. The law makes foreign companies choose between doing business with Cuba or the United States by making their U.S. assets subject to seizure or by imposing other sanctions on them if they continue to do business in Cuba. Significantly, it also codified existing executive orders into law, meaning that Clinton—or any future president—could not lift the trade ban on Cuba without congressional sanction. It was signed into law by President Clinton on 12 March 1996; his advisors counseled that given the strong public reaction to the shoot-down, it was politically infeasible to veto the bill. The European Union (EU), Canada, and other countries condemned the provision on grounds that the United States has no right under international law to control the trade of other countries with Cuba.[26]

In 1999, U.S.-Cuban relations were once again thrust into the spotlight with the Elian Gonzalez affair. Elian, age 6, fled Cuba with his mother and twelve rafters in November 1999. Ten of the rafters, including Elian's mother, perished at sea. A fisherman rescued Elian and delivered him to the U.S. Coast Guard. Debate raged in Congress and within the Clinton administration on whether to send Elian back to Cuba to his father or let him remain with relatives in the United States. Cuban exiles living in Miami organized protests demanding that Elian remain in the United States. The Republican-controlled Congress suggested legislation granting the boy U.S. citizenship and his father legal alien status. Under both international and U.S. law, a child's sole surviving parent is the presumptive guardian. Once the courts ruled that Elian, as a minor, could not file an asylum claim on his own behalf—and that his relatives had no standing to do so—Attorney General Janet Reno ordered federal marshals to seize Elian from his Miami relatives and return him to his father's custody. Elian returned to Cuba with his father when the Supreme Court refused to hear an appeal filed by his relatives.[27]

Vice President (and 2000 presidential candidate) Al Gore split with the Clinton administration over the issue, initially arguing that Elian should remain. Election year politics and Florida's 27 critical electoral votes loomed in the background of this debate. With Florida critical to his election strategy, Gore was not anxious to alienate the powerful Cuban community (there are more than 600,000 Cuban Americans living in Miami-Dade County alone). But his reluctant acquiescence to the final decision might have cost him votes in Florida's close electoral contest in 2000. Analysts noted that the Gonzalez affair "might have driven a lot of Cuban Americans back to the Republican party because they split pretty closely between Clinton and Dole" in the 1996 election.[28] Gore's narrow loss in Florida (which in turn cost him the presidential election) highlighted the staying power and continuing influence of the anti-Castro Cuban community in U.S. politics.

CASTRO HOLDS ON

Growing friction within Cuban society, created by the influx of dollars and a slightly improved economy, precipitated Castro's scaling back dramatically on market reforms in the late 1990s. He tightened control over private-sector employment by extracting monthly fees, revoking licenses, and imposing stiff fines to run many private citizens out of business. The number of private-sector employees fell to under 100,000. In 2004 Castro mandated that U.S. dollars be removed from circulation and converted to Cuban "convertible pesos."

The Helms-Burton Act demonstrated that post–Cold War Cuba was finding new partners to replace the Soviet Union. According to the Institute for Cuban and Cuban-American Studies, "European financing has been the one constant economic lifeline that the Cuban Government has counted on since the end of Soviet subsidies in 1990."[29] By the early 2000s, Spain emerged as one of Cuba's most important foreign investors and its window into the European Union. Spain's oil company Repsol invested $50 million into deep-sea oil wells in Cuban waters in search of light crude oil—and located significant finds of medium and heavy crude oil deposits. (Repsol, along with Norway's Statoil and India's ONGC, is now engaged in further exploratory efforts.) In 2004, European countries extended Cuba at least $1.6 billion in hard-currency loans. Europeans are taking advantage of high interest rates Cuba must pay for financing because of its poor credit rating and high debt. Europeans, along with Canadians, accounted for approximately $2.4 billion in revenue generated from tourism in 2004.[30]

But relations with the Europeans could still be rocky. In March 2003 Castro cracked down hard on dissidents by jailing 75 human rights activists and journalists involved in the Varela Project, a petition of over 11,000 signatures to the Cuban National Assembly calling for political and economic reforms. On 6 June 2003 the European Union reacted to these human rights abuses by freezing further aid to and trade with Cuba, limiting high-level government visits, and inviting Cuban dissidents to EU member states' national-day celebrations. Castro responded to EU actions by leading mass protest marches against the Spanish and Italian embassies and by insulting the Spanish and Italian prime ministers, calling Prime Minister José María Aznar of Spain "a little Fuhrer with a little mustache" and referring to Italian prime minister Berlusconi as a "Fascist" and a "clown." On 5 September 2003, the EU parliament passed a resolution formally condemning Cuba for its human rights abuses.[31]

Eighteen months after the incident, the European Union, encouraged by Spain's new, socialist prime minister, José Luis Rodríguez Zapatero, extended an olive branch to Castro in an effort to resume normal relations. Spain's relationship with Cuba may be as much cultural affiliation as economic opportunity. A large portion of the population of Cuba, a former colony of Spain, is of Spanish descent and many still have close family ties to Spain. Spanish concern for the economic welfare of the Cuban people was a contributing factor to renewing trade. The EU suspended the sanctions it has imposed in 2005 and lifted them altogether in 2008 after Raul Castro became president, even though the U.S. State Department argued that Brussels should keep the measures in place because there had been no "fundamental break" in how Cuba was governed.[32]

After the EU imposed sanctions in 2003, Castro responded in typical fashion by stating unequivocally that "Cuba does not need Europe." New benefactors have been willing to fill the void. In October 2000, Hugo Chávez of Venezuela and Fidel Castro signed the "Integral Cooperation Accord," which established a bartering exchange of goods and services between the two countries and provided Cuba with a lifeline of economic support. Venezuela now provides Cuba with more than 90,000 barrels of petroleum daily and helps Cuba sell part of that total on the world oil market. Venezuela has become Cuba's largest single trading partner. In December 2004, Cuba and Venezuela signed a "Bolivarian Alternative," a cooperation agreement that allows their state-owned companies to operate freely in either country.[33] Again, in April 2005, Castro and Chávez signed 49 economic agreements covering areas of oil, nickel, agriculture, furniture, shoes, textiles, toys, lingerie, tires, construction material, electricity, transportation, health, and education. Cuba is indebted to Venezuela for over $3 billion.[34]

Cuba, in exchange, provides advisors to Venezuela to train Chávez's military. "A close relationship has developed between Cuba's FAR and the Venezuelan Armed Forces, FAN. FAN has established doctrines on 'asymmetrical war' against 'U.S. imperialism' and on Cuba's 'War of all People' adapted to the Venezuelan case." The Department of State views the infusion of spare parts into the Cuban military from this cooperation and the addition of Venezuelan MiG-29s to the region as destabilizing factors in Central and South America. Cuba has sent upwards of 40,000 military advisors, security forces, teachers, nurses, and physicians to Venezuela in exchange for economic aid.[35]

Hugo Chávez is using Castro to further his own "Bolivarian Revolution." As Latin American author Alvaro Vargas Llosa has observed: "What started as the Cuba-Venezuela axis now includes Ecuador, Bolivia, Nicaragua and the Caribbean islands of Antigua and Barbuda, Saint Vincent and the Grenadines, and Dominica. They all belong to the Bolivarian Alliance for the Americas (ALBA). Argentina and Paraguay often cooperate with the group. El Salvador's governing party answers directly to Chavez."[36]

Brazil has emerged as a major new trading partner with Cuba, and Petrobras is very interested in helping to develop Cuba's possible offshore oil fields. The Gulf emirate of Dubai is working with Brazil and Cuba in a major overhaul of the Cuban port of Mariel, with an eye to transforming it into a regional shipping hub for Latin America. Meanwhile, new investments from Qatar are replacing and supplanting European investment in Cuba's tourism industry.

Most significant has been the rise of China as a player in Cuba. Between 2003 and 2004, China increased its trade with Cuba by more than 47 percent, to $525 million. By 2008 that figure had nearly quadrupled, to almost $2 billion. Most of China's aid is in the form of goods (exporting rice, kidney beans, mechanical and electronic products, medicine, light industrial and textile products) and technical assistance. China has committed $500 million to establish a joint nickel mining venture on the island. Chinese president Hu Jintao visited Cuba in 2004 and signed investment-related memorandums totaling another $500 million. The U.S. State Department concluded, "Chinese and Venezuelan economic support . . .

have given Cuba the space to eliminate many of the tentative open market reforms Cuba put in place during the depth of its mid-1990s economic crisis."[37] While China looks to gain economically in the future from nickel development in Cuba, its current imports from the island are insignificant. Strategically, China may be positioning itself close to the United States in a quid pro quo move vis-à-vis Taiwan. China is concerned about the United States' high-tech weapons sales to Taiwan and the strategic deployment of U.S. forces in Southeast Asia. China may view Cuba as a strategic ally and a geographic counter to U.S. positioning in Asia.[38]

China is providing Cuba with more than just economic assistance. Evidence suggests that Raul Castro will use China's example (under Deng Xiaoping) of implementing economic reforms while maintaining a communist government. Raul Castro visited China in 1997 and spent long hours talking to the government on economic reforms. Raul has brought Chinese officials to Cuba to lecture hundreds of executives and leaders on Chinese economic reforms as well. Many members of the Cuban Communist Party Central Committee and two-thirds of the Politburo have visited China in recent years to study Chinese reforms. However, Raul lacks the charisma of his older brother, and many doubt whether he has the leadership necessary to implement any meaningful changes. Nevertheless, Raul has forged close ties with China's president Hu Jintao, with Raul visiting China again in 2005. In November 2008, President Hu made "a state visit to Cuba apparently to have a close look at the partially reforming new administration under Raul Castro."[39]

THE BUSH ADMINISTRATION AND CUBA

After taking office, President George W. Bush eased the embargo to permit the sale of certain agricultural products and medicines to Cuba but continued to restrict the importation of Cuban products. In November 2001 he permitted the unprecedented sale of food to Cuba valued at $30 million, which Castro paid for in cash. This may have been in response to Castro's quick condemnation of the 9/11 terrorist attacks. Earlier that same year, Secretary of State Colin Powell stated that "Castro had done good things for his people," prompting Castro to compliment Powell for his audacity.[40] But events in Cuba would again derail the momentum. When the Castro government jailed 75 prodemocracy dissidents and journalists associated with the Varela Project in March 2003, even members of Congress like Charles Rangel (D-NY), who had called for lifting trade sanctions on Cuba, expressed outrage. President Bush responded by expelling 14 Cuban diplomats and retightening the economic sanctions on Cuba.[41]

New administrations usually conduct a "policy review" of the actions taken by their predecessors, to determine whether or not they will initiate major shifts in policy. The George W. Bush administration was no exception. The Bush administration's Latin American policy team also showed the influence of the Cuban American community; Otto Reich, Bush's assistant secretary of state for Western Hemisphere affairs, had been born in Cuba and had left Castro's Cuba as a teenager with his family. Reich's allies in the bureaucracy included Adolfo A. Franco, the head of the U.S. Agency for International Development's (USAID's) bureau for Latin America and the Caribbean, another Cuban exile; and Lino Gutierrez, a

Havana-born U.S. diplomat who preceded Reich as the acting assistant secretary for Western Hemisphere affairs. In addition, the bureaucracy could reach out to allies in Congress. There were not only several Cuban Americans serving in Congress but a network of congressional staffers—for instance, Jose Cardenas, the head of the Cuban American National Foundation's Washington office, became a foreign policy staffer working for Senator Helms.

In 2002, following a review of Cuba policy, the Bush team announced that it would not lift sanctions, arguing that "the trade embargo is a vital part of America's foreign policy. Trade with Cuba does not benefit the people of Cuba. . . . It's used to prop up a repressive regime."[42] The under secretary of state for arms control, John Bolton, also accused Cuba of developing weapons of mass destruction (WMD) and working with rogue states that were supporting international terrorism; Bolton charged: "The United States believes that Cuba has at least a limited offensive biological warfare research and development effort. Cuba has provided dual-use biotechnology to other rogue states."[43]

In October 2003, the president announced a tightening of the travel ban and issued new guidelines for welcoming Cuban refugees. Most important, he established the Commission for Assistance to a Free Cuba. (Several Cuban American congressional representatives from Florida, including Lincoln Diaz-Balart, Mario Diaz-Balart, and Ileana Ros-Lehtinen, were standing with the president as he delivered his remarks.) The cabinet-level commission, under the chairmanship of the Department of State, was attended by secretaries from the departments of Homeland Security, Treasury, Commerce, and Housing and Urban Development, and the assistant to the president for national security affairs. The commission's mandate was to assist the Cuban people to bring an expeditious end to Castro's dictatorship and identify U.S. government programs that could aid the Cuban people during a transition to democracy.[44]

In May 2004, the commission published a comprehensive 485-page report and presented its recommended policies to President Bush. The report proposed six interrelated policies: empower Cuban civil society, break the Cuban dictatorship's information blockade, deny resources to the Cuban dictatorship, illuminate the reality of Castro's Cuba, encourage international diplomatic efforts to support Cuban civil society and challenge the Castro regime, and undermine the regime's succession strategy. In December 2005, Secretary of State Condoleezza Rice chaired the second cabinet-level meeting of the commission to "send an important message to the people of Cuba, the current dictatorship, and our friends and democratic allies: after 46 years of cruel dictatorship, now is the time for change in Cuba." The secretary of state also implemented measures that reduced remittances, and curtailed family visits to Cuba in order to stem the flow of dollars to the Castro regime.[45] (Rice's cochair on the commission was Commerce Secretary Carlos Gutierrez, whose family had fled Cuba in 1960.)

In July 2005, acting on the Commission for Assistance to a Free Cuba's recommendation, Secretary Rice created the position of Cuba transition coordinator and appointed Caleb McCarry, a Latin American expert and former congressional staffer, to the post. The Cuba

transition coordinator fell under the State Department's Bureau of Western Hemisphere Affairs.[46] Since there are no formal diplomatic ties to Cuba, the United States maintains a U.S. Interests Section as part of the Swiss embassy in Havana. Havana maintains a Cuba Interests Section in the Swiss embassy in Washington, D.C., as well. The office is charged with implementing the policy recommendations of the commission and coordinating the interagency effort. The point man for much of the actual policy implementation in Cuba was Chief of Mission, U.S. Interests Section Havana, Ambassador James C. Cason.

Cason, who eventually became the U.S. ambassador to Paraguay, undertook many efforts to break Castro's information blockade and advance Bush's prodemocracy agenda. According to Cason, "[T]he Castro regime reserves for itself the exclusive prerogative to determine what Cubans should know." Internet access in Cuba is strictly reserved for a select group of vetted regime loyalists, and the Cuban media are nothing more than "propaganda and irrelevancies." To penetrate this blockade, the U.S. Interests Section in Havana provided literature and information to over 200,000 Cuban visitors. The visitors listened to Radio Martí and watched CNN en Español while conducting business at the U.S. mission. Cason's Interests Section distributed thousands of radios to Cubans and distributed over 540,000 pieces of literature and videos. He established a free Internet center that was used by more than fifty Cubans daily and supported prodemocracy activists on the island, providing them with laptops and cameras, and access to copiers and fax machines. Castro claimed that Cason's actions were "blatant provocation" and accused him of promoting subversion.[47]

President Bush committed $59 million over the following two years to fund the commission's recommendations. Much of this money went to USAID. In accordance with the commission's recommendations, the Bush administration continued the USAID Cuba Program originated by the Clinton administration in 1995. The agency's stated goal is to help build civil society by increasing the flow of "accurate information on democracy, human rights, and free enterprise to, from, and within Cuba."[48] Finally, the Defense Department began flying EC-130 Commando Solo missions off of Cuba to broadcast Radio and Television Martí to the Cuban people.

Fidel Castro stepped down as president of Cuba during Bush's second term in office, but the accession of his brother Raul to the presidency was not seen as representing a major break in Cuba's political development. The question of what to do about Castro's Cuba (and what would be U.S. policy after both Castros left the scene) was handed off to yet another U.S. presidential administration.

THE OBAMA ADMINISTRATION TAKES OVER

During his campaign for president, Senator Barack Obama stated that "we must turn the page and begin to write a new chapter in U.S.-Cuban policy to help advance the cause of freedom and democracy in Cuba."[49] Dan Restrepo, a senior fellow at the Center for American Progress, called for a "more flexible approach" to Cuba, served as a Latin American foreign policy expert during the Obama campaign, and became senior director for Western

Hemispheric affairs at the National Security Council. Given also that some of the architects of the Bush administration policy toward Cuba, like Otto Reich, were serving as campaign advisors to Obama's opponent Senator John McCain, it is not surprising that some expected major shifts in Cuba policy after Obama was elected. Despite his pledge to open relations between the two countries, however, Obama insisted that the trade embargo would remain in place until Cuba takes significant steps toward democracy and human rights.

In April 2009 President Obama modified a series of policies to promote democracy and human rights in Cuba. While on the surface, they contradict those of his predecessor, they still support five of the six goals in the Bush administration's 2004 report from the Commission for Assistance to a Free Cuba. The new policies ease U.S. governmental restrictions in four key areas: travel to visit family members, remittances to family members, telecommunications, and humanitarian donations. The new regulations have expanded the definition of who qualifies as a family member and removed limits on frequency and duration of visits and lifted baggage limitations (meaning that family members can bring more goods to their relatives in Cuba, ameliorating to some extent the impact of the trade embargo). In addition, the Obama administration expanded the criteria for those who could receive family remittances, removed limits on frequency and allowable amounts, and lessened barriers on U.S. financial institutions to forward remittances to Cubans in Cuba. In the area of telecommunications, some restrictions on installing, servicing, and providing licenses for operating communications equipment in and to Cuba were removed. Finally, under the category of "humanitarian donations," the administration expanded the scope of items eligible for export under this category.[50] This last act is a recognition of the growing importance of the U.S. farm lobby in Cuba policy. Agricultural exports to Cuba from the United States (between 2004 and 2006) totaled more than $350 million per year, and there is increasing pressure to have that market grow.

However, these changed regulations do impact another stated U.S. policy goal: denial of resources to the Castro regime. Remittances must be exchanged from U.S. dollars to "convertible pesos" and the Cuban government collects a tax, which directly benefits the regime by providing an income source for hard currency. Additionally, the money serves as a significant stimulus to the entire Cuban economy because it flows from the families that receive it throughout the country.

In a series of policy statements, "[t]he president has made clear a willingness to engage constructively with the Cuban Government on a wide range of issues." The goal is to "reach out to the Cuban people in support of their desire to freely determine their country's future."[51] The White House intends to maintain pressure on the Cuban government to respect human rights, increase economic freedom, and allow for political self-determination. An unstated, but clearly implied, goal is to establish ties to the Cuban population in order to assist in its transition to a post-Castro (Raul and Fidel) government. Given the close relations that countries like China, Venezuela, and Brazil now enjoy with Cuba, an American failure to establish relationships with the population in general and those individuals, both in and outside of the current government, who will shape the post-Castro transition may strengthen

these relationships to the detriment of U.S. policy goals in the region. Part of the administration's thinking seems to be that it is in the best interests of the United States to avoid a repeat of the early days of the Castro era when a new Cuban government became allied with countries that were not aligned with U.S. interests in the Western Hemisphere.

In June 2009 the OAS voted unanimously to lift a 47-year membership suspension against Cuba. The United States concurred with this decision but, as Secretary of State Hillary Clinton noted, lifting the suspension does not automatically return membership rights to Cuba. It only opens the door for Havana to embark on the path toward rejoining the organization. Before the OAS will consider accepting any request Cuba must subscribe to the organization's shared values of democracy, self-determination, noninterference, human rights, development, and security as spelled out in its charter. The anti-Castro lobby in the United States also urged Secretary Clinton not to take steps toward any normalization of relations with Cuba in the absence of major reforms. An open letter (29 May 2009) signed by Reich, Gutierrez, and Ambassador Roger Noriega—the Bush administration's ambassador to the OAS and a former staffer for Senator Helms who helped to draft the LIBERTAD Act—noted that "any actions that confer legitimacy on the unelected regime in Havana would be a betrayal of our Cuban brothers and sisters."[52]

Cuban human rights abuses continue to be a stumbling block to a constructive relationship between the two governments. Any momentum toward normalizing relations has been derailed by a human rights violation taking center stage. The December 2009 arrest of USAID contractor Alan Gross—who entered Cuba on a tourist visa to distribute communications equipment—on charges of espionage, followed by the February 2010 death of Orlando Zapata Tamayo, one of the 75 imprisoned in 2003 for being part of the Varela Project, after a hunger strike in jail, led the *Washington Post* to question, "Is the new, Castro-friendly approach working?"[53]

At the same time, the Obama administration is facing bipartisan pressure from some in Congress for further easing of the embargo. The argument runs, "We have normal trade and diplomatic relations with China and Vietnam, two other communist states, so why not with Cuba?" Senators and congressmen from key agricultural-product-producing states are eager to expand sales. There is growing pressure to also rescind the ban on travel to Cuba. Former national security advisor Brent Scowcroft and former secretary of state George Shultz believe the travel ban on all but relatives is "lunacy"[54] and that our policy of exclusion with regard to Cuba makes no sense. There is now proposed legislation that would not entirely overturn the Helms-Burton Act but permit greater sales of U.S. goods to Cuba as well as permitting travel. These efforts have the support of members of Congress on both sides of the aisle, from Senator Richard Lugar (R-IN), the ranking member of the Senate Foreign Relations Committee, to Congressman Howard Berman (D-CA), the chairman of the House Foreign Affairs Committee. The chairman of the House Agricultural Committee, Collin Peterson (D-MN), argues that Cuba is "a very promising market" for American farmers and exporters. Senator Amy Klobuchar (D-MN) argues that "American farmers can greatly benefit from access to new markets in Cuba at a time when our economy needs it most."[55]

So where will the Obama administration go on Cuba policy? Will there be substantial continuity with the policies of the Clinton and Bush administrations, or will the Obama team undertake a substantial break with its predecessors? Will the decades-long dominance of the Cuban American lobby in shaping congressional attitudes toward Cuba be challenged by the rising interests of the farm lobby? (A related question is whether younger generations of Cuban Americans, as they assume leadership positions in the community, will still endorse the rigidly antiengagement stance taken by the lobby over the past decades.) Will the policies of Raul Castro (and his successors) substantially reform Cuba along preferred U.S. lines, or will they take Cuba down the China path of economic change without significant political liberalization? With all of these factors up in the air as of spring 2010, it is difficult to make definitive predictions for the future of America's Cuba policies.

Notes

Unless otherwise noted, all hyperlinks were accurate and active as of 19 March 2010.

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"Resetting" Relations between the United States and Russia

DANA E. STRUCKMAN AND NIKOLAS K. GVOSDEV[1]

The Cold War between the United States and the Soviet Union was the major factor shaping international politics for much of the latter half of the twentieth century. Because the very fate of the world hung in the balance, given that both sides were nuclear superpowers, the relationship between Moscow and Washington was, for every U.S. presidential administration from Harry S. Truman to George H. W. Bush, the most important foreign policy matter on the agenda.

In 1991, Russian president Boris Yeltsin made history by defying communist hard-liners and promising a new Russia based on Western-style democracy. The Soviet Union dissolved. Having freed itself from the confines of Marxist-Leninist ideology, it was expected that a post-Soviet Russia no longer trying to spread communism throughout the world would become a partner of the United States.[2] The Cold War would be replaced by a new partnership between these former adversaries. Fred C. Ikle, who had been under secretary of defense for policy during the Reagan administration and one of the architects of America's military buildup during the 1980s, now called for an "American-Russian defense community" that would "prevent military developments between them that would either threaten America's allies or Russia's national interests and territory."[3]

The "Vancouver Declaration" signed by both President Yeltsin and U.S. president Bill Clinton in 1993 committed both countries to uphold "a dynamic and effective United States–Russian partnership." During their meeting on 27 July 1998, to prepare for yet another summit between Presidents Yeltsin and Clinton, Secretary of State Madeleine Albright and Foreign Minister Yevgeny Primakov agreed that the previous conflict had now been replaced by a "mature partnership" between the two countries. But the end of the Cold War was interpreted differently in both capitals. In Washington, the assumption was that a post-Soviet Russia would cease to oppose U.S. policy around the world. In Moscow, it was expected that Russia would take its place as a key decision-maker in the Western alliance.[4]

Russia's collapse during the 1990s precluded any real partnership, as Russia ceased to be a major player on the world stage. The country's economy contracted by some 60 percent. Moscow was unable to crush a separatist insurgency in the Caucasian republic of Chechnya and was forced to concede to de facto independence for the region. As Alexander Rahr and Nicolai N. Petro observed: "At the time, Russia was continually lurching from one economic

crisis to another. It survived economic default thanks largely to massive amounts of humanitarian assistance and bank loans from the West. Power struggles paralyzed the elite, and the country's mineral and oil resources were plundered by a small group of oligarchs."[5]

If Moscow could only offer marginal assistance in advancing U.S. security interests during this time, it also meant Russia had little choice but to accept U.S. policies as well. U.S. interests had benefited from the collapse of Russia's ability to project power. Regional conflicts in many parts of the world (in Central America, South Asia, and Africa) could be solved on U.S. terms, and Russia was in no position to object to the expansion of Euro-Atlantic institutions like NATO and the European Union into the former Soviet bloc. The 1999 NATO military action against Yugoslavia highlighted Russia's impotence. By the end of the Yeltsin administration, General William Odom, the director of the National Security Agency during the Reagan administration, bluntly proclaimed: "Russia is no longer a great power and is unlikely again to become one over the next several decades."[6]

INTRODUCING VLADIMIR PUTIN

As President Yeltsin struggled to maintain power and stability, he reached out to a political unknown—Vladimir V. Putin—and appointed him as prime minister in August 1999. Yeltsin was gravely ill and many saw this appointment as an attempt by Yeltsin to find a successor to run in the upcoming elections—and someone who was willing to grant Yeltsin and his family immunity from prosecution.

Until 1996, Vladimir Putin was a little-known political figure who had spent most of his career working in the KGB and, for several years in the 1980s, engaged in clandestine operations in East Germany. He then became vice-mayor of St. Petersburg, working for Anatoly Sobchak, a prodemocracy activist who had been one of his professors in college. Always considered fiercely loyal to Russia, Putin was invited to Moscow in 1996 to work in the Yeltsin administration and in 1998 he quickly became the head of the Federal Security Service, the successor to the KGB.[7]

Putin's tough rhetoric and promises of restoring Russia to great-power status once again appealed to the Russian masses following a decade of post-Soviet governmental corruption. The character of Vladimir V. Putin has done much to shape the direction Russia has taken since 1999. U.S. president Barack Obama, after his first meeting with him in July 2009, described him as follows: "He is smart, tough, shrewd . . . he is unsentimental. . . . He thinks in terms of what's good for Russia and will pursue interests aggressively."[8]

After Putin was installed as prime minister, he immediately took a hard-line approach to Islamic militants operating from Chechnya who had attacked the Russian region of Dagestan by ordering the Russian army to "rub them out in the outhouse."[9] At the same time, a series of bombings occurred in several Russian cities, which the Kremlin blamed on Chechen rebels. This provided Putin the opening he needed to order troops into Chechnya to find and destroy the rebel forces. The attack on Russian soil and the swift response by Putin endeared him to the public, and by late fall his public approval ratings soared.[10]

On New Year's Eve of 1999, a visibly ill Yeltsin announced his resignation on national television. In his place, he named Putin as acting president. Most Russians, weary of the last decade of post-Soviet humiliation and corruption, saw in Putin a strong-willed leader dedicated to reestablishing order and, to a certain degree, a sense of Russian pride. Putin's political stance was still murky, as he seemed to subscribe to Yeltsin-inspired capitalism. Yet his inclinations toward establishing what he called the "vertical of power"—having clear lines of control running from the Kremlin down into the bureaucracy and the regional authorities—was in marked contrast to his predecessor's willingness to loosen the controls of the central government. It also illustrated his strong desire to make Russia a relevant global power once again, even at the cost of the democratic movement.

Upon taking office, Putin immediately went to work reforming the Russian political landscape through the removal of elected regional governors from the upper house of parliament, many of whom he considered corrupt. He also created seven new "federal regions" and appointed presidential representatives to oversee provincial political life.[11] To ensure a strong and reliable political base, Putin spearheaded the creation of the United Russia party by merging two pro-government parties, Unity and Fatherland–All Russia, in April 2001. This new party has extended its control, first at the federal and now at the regional levels, to become the dominant political force in Russia today. In the December 2003 elections for the Duma (the lower house of parliament), United Russia took firm control of the legislature, capturing 300 of the 450 seats. Putin himself enjoyed a landslide reelection victory to the presidency in March 2004.[12]

In September 2004, Putin faced a major domestic crisis when Chechen rebels took more than 1,000 people hostage at a school in the Caucasus region. The rescue attempt turned bloody and it is estimated that 330 hostages lost their lives in the rescue.[13] Immediately following the crisis, Putin abolished popular elections of Russia's regional governors. Now the president nominates governors, with his choices being confirmed by the regional legislatures, rather than having gubernatorial candidates run for office in open elections. Putin argued these measures would help decrease regional corruption while at the same time unifying the country in its fight against international terrorism. It also had the effect of removing regional governors as a potential check on the central government.

The United Russia party again swept the December 2007 elections, giving it a supermajority within the Duma and the ability to amend the constitution. These elections also marked the disappearance of the pro-Western, liberal democratic parties from the Russian political process. Some technocrats joined the ruling United Russia party, but the Union of Right Forces and the Yabloko parties both failed to get enough votes to receive seats in the Duma. A changed electoral law also eliminated the ability of independents to run for seats, removing some of the more vocal critics of Putin from the legislature. Other political parties—such as Fair Russia or the Communist Party—may be critical of particular aspects of Putin's policies, but otherwise do not challenge the system.

The 2003/04 and 2007/08 elections drew criticism from international observers, particularly those from the Organization for Security and Co-operation in Europe, who

characterized them as "free but not fair" given the many advantages enjoyed by Putin and his supporters. The vice president of OSCE called the elections "strange" and "problematic" and further stated, "There was the strange situation that the executive branch almost chose the legislative branch. It is supposed to be the other way round."[14]

While some expected that Putin would seek a third term as president, he instead nominated Dmitry Medvedev—who was a close associate from St. Petersburg, his former chief of staff, the former CEO of Gazprom, and a deputy prime minister—for the job. Medvedev won the 2008 presidential contest handily—and then appointed Putin as prime minister.

The consolidation of political power by the Kremlin has also narrowed the space for political and civic freedoms. Human rights groups inside Russia complain that they have come under increasing pressure from the Kremlin. Some rights activists complain they have no public support or funding. Lev Ponomaryov, a leading rights activist, claims numerous former KGB officers loyal to Putin populate top government posts and operate with a police-state psyche. Ponomaryov claims, "People are afraid of funding human rights activities in Russia. Businesses are afraid and Western organizations are leaving."[15]

Russia has also clamped down on opposition group demonstrations. If demonstrations are conducted, riot police quite often outnumber the protesters themselves. Moreover, the Duma passed a bill in 2006 stepping up control over the activities of human rights groups and other like-minded nongovernmental organizations (NGOs). Some Kremlin critics also claim this law gives the government the power to shut down NGOs it perceives as troublesome or threatening.

Having seen the enormous influence that the mass media, especially television, played in Russian politics during the 1990s, Putin moved to exert control over broadcast journalism, by either reestablishing state ownership over stations or ensuring that they were owned by "reliable" private business figures.[16] Many reformers inside Russia saw Putin's actions as a serious blow to an independent press—an integral part of any democratic society. The Putin regime effectively took control of the bulk of the Russian media and, by January 2002, the last major independent national television station in Moscow was shut down due to what many believed was government pressure. In May 2007, Freedom House ranked Russia 158th globally in terms of press freedom, and gave it the rating "not free."[17]

Outspoken critics of the government are often threatened or marginalized and, in some cases, have been found dead. Anna Politkovskaya, a highly respected journalist and outspoken critic of Putin and the war in Chechnya, was murdered in October 2006. Many feel Politkovskaya's investigations into war atrocities in Chechnya made her a prime political target.[18] In November 2006, Alexander Litvinenko, an outspoken critic of Putin, died in a London hospital from being poisoned by a highly radioactive substance. From his deathbed, Litvinenko blamed Putin for his poisoning.[19] A string of unsolved attacks against and murders of journalists—usually those involved in exposing governmental corruption—has made Russia one of the most dangerous places for journalists, with some 49 killings between 1992 and 2008.[20]

Economically, Putin realized that Yeltsin's attempts at the privatization of former state enterprises had bred extensive corruption, particularly in oil and gas companies. As a result, he attacked some of Russia's largest and richest companies through numerous investigations. In 2003, the wealthiest man in Russia, oil tycoon Mikhail Khodorkovsky, was arrested on charges of fraud and embezzlement.[21] Some believe his arrest was a reaction to his acquisition of a very high-profile newspaper staffed by journalists known to be very critical of the Kremlin; Khodorkovsky was also known to be a financial supporter of opposition political parties.[22] Others pointed to Khodorkokvsky's interest in selling a stake in his oil interests to a U.S. oil company—ExxonMobil or perhaps ChevronTexaco—as a threat to the Kremlin's influence over the Russian oil industry.[23] A pro-Kremlin think tank, the National Strategy Council, charged that Khodorkovsky and other oligarchs were planning a "creeping coup" by using their billions to "buy" the 2003 elections and change the Russian political system to benefit themselves.[24]

Following Khodorkovsky's arrest, most of the assets of his oil company were sold in a closed auction to a state-controlled company. The "nationalization" of Khodorkovsky's company raised eyebrows even in Putin's inner circle; his economic advisor, Andrei Illarionov, denounced the move as the "swindle of the year."[25] This marked the beginning of the Russian government's movement to reestablish control over the country's energy industry, while at the same time removing wealthy power brokers perceived as threatening to Putin. (Khodorkovsky was sentenced to an eight-year prison term, but is now facing new charges that, if he is convicted, would keep him in jail for a longer period of time.) Putin offered a "deal" to the remaining major business figures, such as Roman Abramovich, Oleg Deripaska, and Vladimir Potanin: keep your wealth and property, but stay out of politics—and support Kremlin policies. The Kremlin has also moved to reinvigorate powerful state companies such as Gazprom, the natural gas and energy conglomerate, and turned state concerns such as Rosoboronexport—which handles foreign arms sales—into major holding companies, using their profits to buy up shares in a variety of companies. Rosoboronexport now has controlling stakes in Russia's main automobile industries, owns the largest titanium company, and runs the "Russian Technologies" holding. In contrast to the privatization that happened during the Yeltsin years, today the state is once again a major economic actor—a trend that accelerated during the financial crisis of 2008–2009, when, in return for loans from Russian state banks, companies were required to accept state nominees on their boards of directors.

The Kremlin has also moved to reverse declines in Russia's military posture. The influx of billions of dollars from oil and gas sales provided the government the opportunity to significantly upgrade its military forces. The restoration of the military is a priority of Putin's to further the renewal of Russian pride and the recovery of international influence. To this end, Putin approved a $200 billion overhaul of Russia's military forces. This includes the planned purchase of new-generation missiles, aircraft, and potentially even aircraft carriers.[26] Currently, new nuclear submarines, *Yuri Dolgoruky* and *Severodvinsk,* are undergoing testing, as is the Bulava submarine-launched ballistic missile system. A fourth-generation corvette, *Steregushchii*, was launched in 2008. Russia unveiled the "first warplane entirely

designed and built by Russian companies since the Soviet Union collapsed in 1991," the Sukhoi PAK FA—Russia's response to the F-22 and the F-35—in January 2010.[27]

Moreover, Russia is looking to expand its military footprint beyond the post-Soviet space. The Russian navy is regularly sending vessels to the Mediterranean, the Caribbean, and the Indian Ocean and is holding exercises in the Baltic Sea and with India, China, and Venezuela. Proposals have been bandied about for Russian naval and air outposts in places like Libya, Yemen, Vietnam, Cuba, and Venezuela. This new attitude has also emboldened Russia to revive long-range bomber missions, reminiscent of flights flown routinely during the Cold War. In one case, two Russian bombers reportedly crossed the Pacific into the vicinity of Guam. In another, two bombers flew into NATO territory and briefly entered British airspace before turning back. Russia has recently conducted numerous tests of new land- and sea-based ballistic missiles, designed to replace the aging fleet of Soviet-era missiles. Also, in response to the U.S.-led missile defense system, the Kremlin is touting a project that will include not only air defense systems, but also anti-ballistic missile and space defense systems.[28]

However, the revival of the Russian military does not equal a return of a Soviet-style threat. Tom Nichols, a national security studies professor at the Naval War College, characterizes the modest buildup as an "irritation" to the United States, not an existential threat.[29] However, it does give Russia greater leverage vis-à-vis its neighbors and allows Moscow to "show the flag" and project a modest amount of power in regions of the world—including Latin America—where it can complicate U.S. plans.

The 2008 Georgian war demonstrated that the Russian military is vastly improved from the ragtag force of ill-trained conscripts that failed in the first Chechen war (1994–1996), but that there is still much room for improvement. The Russian military still lacks many of the technological advantages enjoyed by Western armies, including precision-guided munitions and advanced reconnaissance systems. Moreover, the Georgian war exposed vulnerabilities in Russian armed personnel carriers, tanks, and aircraft. Yet the reappearance of Russian forces in parts of the world that the United States had assumed Moscow would no longer be interested in—particularly the Western Hemisphere—and Russia's willingness to use force in the Eurasian space have both stoked fears in Washington about the "return" of a "Russian threat."

Putin's tenure as Russia's president won him both critics and fans. For many in the West, and within liberal circles in Russia, Putin is a "former KGB agent, bent on restoring former Soviet practices." On the other hand, Putin enjoyed high approval ratings in Russia and "most Russians think Putin's policies saved the country from collapse."[30] Part of the reason for Putin's high approval ratings was the tremendous economic recovery Russia enjoyed for much of the first decade of the twenty-first century. Russia is the second-largest producer of oil in the world and the world's largest producer and exporter of natural gas.[31] Soaring fuel prices enabled Russia to pay off its foreign debt while building the third-largest gold and hard-currency reserves in the world, worth an estimated $425 billion at the beginning of 2008. Using this energy revenue, the Russian government accrued nearly $150 billion in a

"rainy day" account dubbed the Stabilization Fund,[32] which helped to cushion Russia from the shock of the global economy crisis in late 2008 and 2009. Nevertheless, there was simmering unrest at the hardships created by the crisis. Protests, strikes, and demonstrations were containable—by a combination of increased police deployments and payment of delayed wages and benefits. For a time, some analysts questioned how long Medvedev and Putin could keep dissatisfaction from becoming a major challenge to the political status quo.[33] If the Russian economy resumes its upward track in 2010, with growth projected at 6.2 percent, and if this translates into higher wages and benefits for the population, then the likelihood of serious political unrest diminishes.

THE BUSH-PUTIN RELATIONSHIP

Upon taking office, one of Putin's stated goals was to "reverse" the situation of the 1990s, characterized by a weak Russian state unable to impose order at home and defend its interests abroad. Putin became president in the waning days of the Clinton administration. Before leaving office, Clinton was eager to cement a series of final arrangements with Russia, especially one that would permit the United States to move forward on missile defense research. But Putin preferred a "wait and see" approach, pending the outcome of the 2000 elections, rather than reach any definitive agreements with a lame-duck president. The guiding assumption behind the Putin team's approach was that if Al Gore was elected, they could revisit the Clinton initiatives, but that if George W. Bush entered the White House, there would be no guarantee he would be bound by any executive agreement crafted by his predecessor.[34]

Initially, the Bush administration took office in 2001 extremely skeptical about Russia and eager to make a clear break with the policies of the Clinton administration. Indeed, one of the major attacks directed against Vice President Al Gore in 2000 was the "overpersonalization" of U.S.-Russian relations, both between Clinton and Yeltsin and between Gore and Russian prime minister Viktor Chernomyrdin. There was also a strong sense that the new Republican administration would work to contain Russia. One of the first steps the George W. Bush team took was to dismantle the Clinton-era State Department configuration for diplomacy with Russia, effectively downgrading Moscow's importance.[35]

But Bush himself never completely bought into the worldview of some of his campaign staff and senior aides that saw Russia as a threat. The June 2001 summit meeting in Ljubljana, Slovenia, between Bush and Putin, followed by the events of 9/11, led the president to change course and to pursue the possibility of a closer partnership with Russia to combat shared threats. Putin's willingness to override the recommendations of some of his senior generals and ministers in favor of offering immediate assistance to the United States to facilitate the Afghan operation also made a major impact on the administration's tendency to view Russia more positively.[36]

For Bush, the strategic partnership with Russia that had eluded the Clinton administration now seemed to be achievable, based on common interests such as weapons nonproliferation, energy, and the global war on terror. For Putin, attempting to revitalize the

Russian economy after the disastrous decade of the 1990s, cooperation, not confrontation, with the West was vital. Bush wanted Russian cooperation in combating terrorism and nuclear nonproliferation; Putin hoped the United States would work to integrate Russia into the global economy and Western institutions. Both preached the virtues of an energy partnership—one that would give Russia guaranteed markets for its energy and help the United States reduce its dependence on the Middle East. After his first meeting with Putin, Bush proclaimed, "[T]hat's the beginning of a very constructive relationship." At first, events seem to bear out the president's optimism—Putin helped facilitate the introduction of U.S. forces into Central Asia to support the military mission in Afghanistan and closed a Soviet-era intelligence installation in Cuba. In 2002 Russia and the United States cooperated in removing enriched uranium from the Vinca reactor in Serbia to safekeeping in Russia, reducing the risk that it might fall into hostile hands.

But as Russia's economy revived, so did its assertiveness on the world stage—including its criticisms of U.S. foreign policy. And Putin's moves toward a more authoritarian Russian state worried many in the U.S. government. Some were concerned that Russia's democracy deficit at home leads it to be more confrontational in its relations with the United States as the Kremlin becomes a supporter of authoritarian and autocratic governments around the world.[37] As Strobe Talbott, a former senior Clinton administration official who oversaw U.S. policy toward Russia, concluded, "An assertive Russia has raised fears of a new Cold War by cracking down at home and flexing its muscles abroad."[38]

Others, particularly in Congress, were reluctant to support greater cooperation with Russia, because of concerns over the erosion of democracy. The late chairman of the House Committee on Foreign Relations, Representative Tom Lantos, had been a particularly strong critic of how Putin governed Russia as president and prime minister—a view that is echoed on both sides of the aisle.[39] These critics argued that Russia's "democracy deficit" at home would make it more hostile to U.S. interests abroad.

As a result, Congress frustrated many of the efforts of the Bush administration to improve ties with Russia. In 2001, President Bush promised Putin that he would push to have Russia graduated from the Jackson-Vanik amendment, which was passed in 1974 to put trade restrictions on nonmarket (read communist) economies that prohibited the free emigration of their citizens. This would create normal trading relations between the United States and Russia, a necessary precondition for Russia to be able to enter the World Trade Organization. He was unable to mobilize support to do this, however, because this remained a congressional point of leverage over Russia. As a Council on Foreign Relations report noted:

> Blake Marshall, the former executive vice president of the U.S.-Russia Business Council, says refusing to abolish the amendment or graduate Russia has become a way for Congress to express disapproval with Russian trade, foreign policy, and human rights offenses. Russia has been officially in full cooperation with the amendment's original intent since 1994, Marshall says, but "we have moved the goalpost." In 2003, Sen. Charles Grassley (R-IA), then chairman of the Senate Finance Committee, which has jurisdiction

> over the Jackson-Vanik Amendment, told the *Washington Times* he would back Russia's graduation "under the right circumstances," but Russia's lack of support for U.S. operations in Iraq and trade barriers on U.S. pork, beef, and poultry hurt congressional support at the time.[40]

Other congressmen have raised concerns over human rights, Russian trade barriers that affect industries in their own states (during the Bush years, Senator Joe Biden was an opponent of graduation because of Russian policies that adversely affected Delaware chicken producers), and a host of other issues to block Russia's graduation.

At the G-8 summit in St. Petersburg in 2006, Bush told Putin he would work to reach a civilian nuclear accord that would permit Russian and American companies to work together. Cooperation on nuclear issues was seen as one area where both countries could advance their interests. However, a "123 Agreement" requires congressional approval. The deal was signed in May 2008—after prolonged negotiations—but died on the Hill. Senator Biden spoke for many when he described the agreement as "dead" unless Russia were to change its "political course."

Finally, Congress made it much harder to stop NATO expansion to include former Soviet republics. The NATO Freedom Consolidation Act of 2007 is quite clear: "Congress calls for the timely admission of . . . Georgia . . . and Ukraine" into the North Atlantic Treaty Organization. This includes providing support for these states to bring about this goal.[41]

Even though the Bush administration was sympathetic to some of Putin's problems—particularly the terrorist threat—there was nonetheless a good deal of criticism about Putin's actions that were seen as undermining the democratic process and complicating the relationship with the United States as a whole.[42] Congressional criticism was echoed within the executive branch and revived the skeptical view of Russia that had predominated during the 2000 campaign. Even though the president remained committed to his vision of a U.S.-Russian partnership, his administration had become much more skeptical of Moscow. There had always been deep-standing concerns about Russia within the Republican Party, divisions that had not been overcome by the president. Bush's good personal relations with Putin were not replicated between lower-level members of their administrations. Nor was the president able to translate his personal vision into a comprehensive policy agenda. Nina Hachigian, a former Clinton administration National Security Council staffer, noted: "[O]n Russia, we saw a more classic Bush administration national security model, where divisions within the administration resulted in a roller-coaster ride of policy, from the highs of President Bush's soul-gazing to official rhetoric that recalled the Cold War. (Secretary of Defense Bob Gates' moments of sobriety on these issues were always welcome)."[43]

The two "poles" in the Bush administration were grouped around the National Security Council senior director for Russia, Thomas Graham—who favored engagement with Moscow—and the assistant secretary of state for Europe, Daniel Fried, who was far more critical of Putin's Russia. Over the course of the administration, Vice President Dick Cheney had become increasingly skeptical about the utility of engaging Russia, while Secretary of State

Condoleezza Rice attempted to find a "balanced position" that was both critical of Russian policies but open to further negotiations, but over time became less sanguine of the prospects for success.[44]

Over time, the skeptics gained greater traction; Graham left the administration in 2007. The view that prevailed in the end was that difficulties in the U.S.-Russian relationship were caused primarily by Putin and the type of government he had created. Fried, testifying before the House Committee on Foreign Affairs (9 September 2008), made this clear: "Russia is not doomed to authoritarianism at home and aggression against its neighbors. Those are the choices that Russia's leaders are currently making. Unless they change their path, we are in for a difficult period ahead."

The U.S. and Western media helped to reinforce congressional skepticism toward Russia, to such a point that the Kremlin tried to counter negative press about the Putin administration with a public relations strategy. Dmitry Peskov, who served as Putin's press secretary, conceded that Russia had a "communications problem" with the United States. Yet despite launching an English-language, state-supported news channel and engaging the services of American public-relations firms, the Putin government found it difficult to change American perspectives about Russia.[45]

The growing number of disagreements between the countries resulted in the Bush administration's, during its second term, rethinking the prospect of a true partnership with Russia.[46] In contrast to the early expectations that Russia would work closely with the United States in pursuing a common agenda, Russia was now seen as an obstacle. And the tone changed in Moscow as well. If the language circa 2000 was of partnership between Russia and the United States, many in the Russian leadership today will quietly echo sentiments expressed among the general Russian public that "America does not want Russia to get off its knees, to stand up on its own feet."[47] Moscow became far more lackluster in its support for robust measures against Iran and North Korea, objected to the continued U.S. presence in Central Asia, and disagreed with U.S. initiatives to promote energy diversity for Europe. The Kremlin also became much more sensitive to U.S. criticisms of its domestic policies. When the U.S. government announced aid to prodemocracy groups in Russia, for instance, Deputy Prime Minister Sergei Ivanov bluntly replied, "[T]his is practically interference in our internal affairs."[48]

By November 2006, experts were warning "that the U.S.-Russian relationship has reached its lowest point since the end of the Cold War."[49] At the 43rd Munich Conference on Security Policy in February 2007, Putin challenged the notion of American leadership in the global community and bluntly declared "that the unipolar model is not only unacceptable but also impossible in today's world." And when members of Congress and the Duma gathered in Washington for a bilateral meeting between legislators on 21 June 2007, the frustration on both sides was quite evident. Congressman Lantos told the members of the Duma's Foreign Affairs Committee,

> We had enormous expectations when President Yeltsin came to power. . . . Since Mr. Yeltsin's departure as president of Russia, we have had a number of very severe problems in our relations with Russia. . . . [B]efore our two nations stretch two very different roads: one is reminiscent of the unlamented past, and it is flanked by mistrust and conflict. The other road entails real reform—a hopeful cooperation looking to our joint future. I am convinced that just as the American Congress, the Russian Duma will want to take this hopeful and positive road so we can achieve our joint goals of containing Iran, denuclearizing the Korean peninsula, working on global energy security.[50]

FLASH POINTS IN THE RELATIONSHIP, 2007

Despite the warm ties between the two presidents, there was a continuing lack of trust between Moscow and Washington. The bureaucracies in both capitals were conditioned to view the other country as a serious rival and national security threat. These attitudes proved hard to alter. Consider how it was the first reaction of an American military pilot deployed in the skies over Washington on 9/11 upon seeing the Pentagon on fire to conclude that it must have been a Russian cruise missile attack that caused the damage—not an airplane hijacked by terrorists.

The role of the North Atlantic Treaty Organization in both European and global security was a source of tension in the bilateral relationship. The creation of the NATO-Russia Council (in 2002) allowed Russia to have a "voice" at the table—but newer members of the NATO alliance were adamant that Moscow could never have a "veto" over NATO's actions. Nor would the United States agree to creating any new security architecture for Europe and Eurasia that would envision joint decision-making between Russia and NATO.

Moscow, while not especially keen on NATO enlargement in Central and Eastern Europe in the 1990s, had no choice, given its weakened condition, but to accept its inevitability. When the second wave of NATO expansion occurred, to include the Baltic states (Estonia, Latvia, and Lithuania, which had been forcibly incorporated into the USSR in 1940), the Kremlin had reservations. Then–defense minister Sergei Ivanov warned that fully integrating the new members into NATO operations—as well as any future expansion of the alliance to encompass states like Ukraine and Georgia—could cause a recalculation of the Russian nuclear strategy. In November 2007, Putin angrily lashed out against NATO for what he perceived as overly aggressive expansion saying, "In violation of previous agreements, military resources of NATO members are being built up next to our borders . . . we cannot allow ourselves to remain indifferent to this obvious muscle-flexing."[51] He didn't stop with just heated rhetoric. Putin suspended Russian obligations under the Conventional Forces in Europe Treaty, which limits the deployment of tanks, aircraft, and heavy conventional weapons across the continent. Putin's argument was based on fear of a possible buildup of NATO forces in the Baltic region, to which Russia now has the right to "redeploy heavy weaponry along its western and southern borders, but would do so only in response to any possible NATO redeployment."[52]

As Russia's relations with NATO and the United States soured, it turned eastward. In 2001, China, Russia, and several Central Asian republics created the Shanghai Cooperation Organization (SCO). The SCO was initially formed to address security issues in Central Asia; increasingly, however, it has been used by Moscow (and Beijing) as a way to reduce U.S. influence in the region.[53] In July 2005, wary of U.S. motives for long-term military presence in Central Asia, the SCO approved a Moscow-authored plan calling for withdrawal of U.S. and coalition military bases from Uzbekistan and Kyrgyzstan. The SCO approved the plan despite ongoing military and humanitarian operations being conducted from the bases into Afghanistan—an effort previously supported by Russia. Uzbekistan evicted American forces later the same year.[54]

At its heart, the tensions over NATO expansion reflected a growing divergence between Moscow and Washington concerning the disposition of the "post-Soviet space"—the non-Russian republics of the former USSR. Initially, the Russian political elite interpreted partnership with the United States to mean the recognition of Russia as a "regional superpower" in Eurasia.[55] Now, it seemed that Washington was working against Russia's security and economic interests in its own backyard. From the U.S. perspective, American policy was designed to enhance the independence of the other post-Soviet states and to give them the opportunity to join NATO and other Euro-Atlantic institutions. The two "color revolutions"—the "Rose Revolution" in Georgia in 2003 and the "Orange Revolution" in Ukraine in 2004—brought two very pro-American governments to power. This, in turn, worsened those countries' relations with Moscow. In the case of Georgia, Russia showed no enthusiasm for facilitating the reintegration of two separatist regions, Abkhazia and South Ossetia, that had effectively broken away from Georgian control in the early 1990s. Ukraine, which had been receiving subsidized natural gas from Russia, had its supplies curtailed in 2006; Russia eventually resumed pumping gas to Ukraine, but at nearly twice the previous price. But Russian pressure against these two countries in turn caused a negative reaction in Washington, particularly in the U.S. Congress.

Missile defense also emerged as a contentious issue. President Bush had proposed deploying facilities in eastern Europe to shield both U.S. allies and the American homeland from a possible ballistic missile launch emanating from Iran. The United States would install 10 interceptor missiles in Poland, for which it would have to build a base, and construct a radar installation in the Czech Republic.[56] Moscow responded immediately, claiming this plan posed a serious security challenge by counteracting Russia's nuclear deterrent capability and providing an opportunity for the United States to gather intelligence. The Bush administration made numerous assurances that the missile defense shield was not aimed at Russia and would be used in no capacity other than defense against incoming missiles from Iran or the Mideast region. As with NATO expansion, Moscow viewed the plans to deploy the missile system in Poland and the Czech Republic as part of an "encirclement" of Russia. Russians did not trust American assurances that the number of interceptor missiles would be limited to 10 and feared that, once in place, such a system could easily be expanded to counter the Russian nuclear arsenal and so weaken the value of deterrence. The fact that

any system would require the deployment of U.S. military personnel to Eastern Europe was also troubling.

What to do about the final status of the province of Kosovo, which had been effectively detached from Serbia after the 1999 NATO campaign, was also a major irritant in U.S.-Russian relations. The Russian position was that the UN Security Council resolution 1244 called only for Kosovo to receive autonomy, not full independence. Russia upheld the principle of territorial integrity of states, in which it was joined by states like China, India, Brazil, and even some states in Europe such as Spain that have also had to deal with separatist movements. The United States, Britain, France, and other European powers argued that Kosovo could never be effectively reunited with Serbia and pushed for independence. When talks between Serbian and Kosovar officials failed to reach any agreement, the United States and some of its allies indicated that they would support a "unilateral declaration of independence" by Kosovo (which took place in 2008). Russia later used this precedent to justify its own recognition of two breakaway regions of Georgia—Abkhazia and South Ossetia—while the United States continues to support the territorial integrity of Georgia.

Energy was supposed to have been the linchpin of a new U.S.-Russian relationship. In June 2002, Putin and Bush began what was known as the "strategic energy dialogue," designed to increase coordination and cooperation between energy officials and companies. Part of this dialogue resulted in a U.S.-Russian agreement to build a privately owned pipeline to the deepwater port city of Murmansk to enable export of oil to the United States. Those plans died in the aftermath of the Yukos affair. An increased willingness on the part of the Kremlin to scrutinize 1990s energy deals led to the revocation or modification of longstanding licenses to Western energy companies for access to Russian natural gas fields. Russia enacted a new subsoil law in 2008 that, in terms of energy, defines as strategic any field that contains more than 70 million tons of recoverable oil or 50 billion cubic meters of natural gas; such projects must be developed by a majority-Russian partner and are not open to ownership by foreign interests.

Increasingly, Russia wants to emerge as a global energy "hub." This means ensuring that natural gas and oil reach European and other global markets primarily through Russian-controlled pipelines. Part of the tensions in the Russia-Ukraine relationship related to Ukraine's inability to pay for its energy at market prices and gave an opening for Moscow to pressure that country to consider selling Russia parts of its own energy infrastructure. In addition, Russia is moving ahead on two new pipelines—the Nordstream and the South Stream—which would send energy directly from Russia to the EU through undersea lines in the Baltic and Black seas. At the same time, Moscow has worked to impede alternative projects designed to bring energy from other post-Soviet states like Turkmenistan or Azerbaijan to European markets bypassing Russia. The United States supports energy diversification efforts as a way to ensure that no one supplier can use its leverage to "blackmail" Europe and that both customers and suppliers have multiple options to buy and sell

energy. Russia, in turn, has interpreted U.S. efforts as a way to limit Russian power, since so much of Russia's tax base comes from the export of energy.

The perception that the driving factor in U.S. policy toward pipelines and energy routes was the exclusion of Russia came to the forefront during the April 2006 visit of Secretary of State Condoleezza Rice to Greece and Turkey, with Rice apparently lobbying both Athens and Ankara to block Gazprom participation in a Greece-Turkey gas pipeline "whether as a shareholder in the pipeline company or as a gas supplier."[57] The United States has also strongly endorsed the alternative NABUCCO pipeline designed to bypass Russia in bringing Central Asian gas to European markets.

Finally, there was Iran. For the first terms of the Putin and Bush administrations, there was some important cooperation between the United States and Russia in dealing with Iran's nuclear activities. In 2002, Russia was a key supporter of U.S. and European attempts at blocking Iran from nuclear weapons production. Russia even agreed to take the matter to the UN Security Council (UNSC) for deliberation. As late as March 2007, Russia sided with the United States and voted on the UNSC to toughen sanctions imposed on Iran.[58] Even more significant, Russia withdrew most of its nuclear scientists from its unfinished nuclear reactor construction project with Iran. While cooperation on the Iranian issue seemed to be heading in the right direction, Russia's ties with Iran via construction of nuclear reactors and its history of missile technology transfers have been a major U.S. concern for many years. In this regard, policy objectives pursued by the White House and Congress have been consistent through many administrations: promoting nonproliferation principles and strengthening diplomatic/economic tools aimed at punishing states pursuing nuclear or weapons of mass destruction (WMD) capabilities outside of the international legal framework.[59]

Initially, Russia supported the U.S.-backed plan in its treatment of Iran. This approach used a two-track strategy to press for sanctions while calling for Tehran to disclose information surrounding its nuclear programs. After Iran failed to comply with these resolutions, the United States called upon the UNSC to step up the pressure with a new, tougher set of sanctions on Iranian financial institutions and Iran's military designed to roll back even further critical elements of its nuclear weapons development.

But the Russian perspective began to change. The veracity of U.S. intelligence claims was challenged in the aftermath of the Iraq war. Russia began to more narrowly define the problem—it was preventing Iran from obtaining a nuclear weapon, not stopping Iran from mastering nuclear technology. Some Russian strategists pointed out the advantages Russia gains by prolonging the stalemate between Washington and Tehran. Finally, Russia does not view Iran as a threat to its interests—especially because it is a major trading partner with Russia—and so became less receptive to U.S. arguments about the dangers posed by Tehran.

The United States was especially disappointed when Russia delivered enriched-uranium fuel rods to Iran's Bushehr power plant in 2007. Russian foreign minister Sergei Lavrov was

unconvinced that Iran was pursuing a nuclear weapon and stated that Russia would not support a new round of sanctions, saying, "It fully confirms the information that we have: that there is no military element in their nuclear program."[60]

Russia has an extremely complicated and contradictory approach vis-à-vis Iran:

> Moscow doesn't want a nuclear-capable Iran, but it is an annoyance that Russia can tolerate. To get Moscow's cooperation, therefore, there must be something on the table that alters the Russian calculation. One potential concern for Russia is that if it joins in putting real pressure on Tehran, Iran could eventually negotiate a Libya-style settlement with the West, clearing the way for major new Western investments in Iran's energy sector.
>
> Right now, Moscow benefits from Iran's isolation from the West. Not only are Iran's formidable gas reserves not accessible to European users, preserving Russia as the Continent's major supplier, but alternate routes for Central Asian energy that could traverse Iran are also not possible. Yet resolution of the nuclear issue could open up the vast reserves of Iranian natural gas for use through the Nabucco line, the major pipeline on the drawing boards for getting energy to Europe without going through Russia. The project is currently nearly moribund because there isn't enough supply to justify the huge investments. Iran would be a game-changer.
>
> There is also a strain of thought within the Russian foreign policy establishment that advocates keeping the United States distracted in other parts of the world for as long as possible to keep Washington from directing its attentions to the Eurasian space to the detriment of Russia's security and economic interests.[61]

TRYING TO PREVENT A "NEW COLD WAR," 2008–2009

The two presidents met on the sidelines of the G-8 summit in Heiligendamm, Germany, in June 2007. At this meeting, Putin surprised Bush with a proposal to create a joint missile defense system—the so-called Gambala gambit—that would be controlled from the Gambala installation in Azerbaijan and use assets in Russia and other Black Sea countries to counter any Iranian threat.[62] Following up on this meeting, Bush invited Putin to his family's personal compound in Maine ("the Lobster Summit") at the beginning of July to attempt to repair a seriously troubled relationship.

Fyodor Lukyanov, the editor of *Russia in Global Affairs*, was not optimistic about the outcome of the meeting:

> There is no reason to expect a radical turnabout because a radical turnabout in U.S.-Russian relations requires a profound rethinking of those relations and the emergence of some sort of strategic course. The problem is not in the personal relations between the two presidents or in the sum total of various factors of conflict. It is in the fact that since the Cold War no working models of interrelations have emerged. The relations that arose in the 1990s, for various reasons, didn't work. What we are seeing now are the consequences of the crisis of the 1990s model. Serious work is required in order to develop

> solid, stable relations. And neither side is currently in a position to do this serious work with a long-term perspective.[63]

This meeting produced some wonderful photo opportunities but failed to find compromise solutions on Kosovo and missile defense. Nor could any way be found to bridge the gap on NATO expansion.

While the Bush administration welcomed the dialogue with Russia on missile defense, it rejected the Putin counterproposal, arguing that the Russian plan could not provide adequate coverage due to its technological limitations and location. Moscow once again voiced extreme displeasure with the plan and went so far as to threaten deployment of short-range missiles to its western borders that could range to both Poland and the Czech Republic.[64]

The year 2008 was arguably the lowest point in U.S.-Russian relations in two decades. The United States went ahead with a major (although ultimately failed) effort to get NATO to offer Membership Action Plans for Ukraine and Georgia, signed agreements on putting missile defense installations in Poland and the Czech Republic, and recognized the independence of Kosovo in the absence of an agreement with Serbia. Bush met with Putin one last time, at Sochi on the Black Sea in April 2008, but was unable to reach any solutions with the outgoing Russian president. The most that both sides could agree upon was a vaguely formulated "road map" for the future of U.S.-Russian relations.[65]

Meanwhile, the tensions between Russia and Georgia reached the boiling point. By 2008, there was an increasing number of incidents along the cease-fire lines in Abkhazia and Ossetia, between the Georgian forces on one side and the separatist forces and the Russian peacekeeping troops on the other. Meanwhile, President Mikheil Saakashvili continued to press hard for Georgia's membership in NATO. Georgia became one of the largest recipients of U.S. aid—including training and equipment for its military—and worked to cement ties with the Bush administration, eventually becoming one of the largest contributing nations (behind the British) to the U.S. "coalition of the willing" in Iraq. Saakashvili believed that he would have U.S. support in any clash with Russia. In August 2008, Georgian forces moved into South Ossetia. Russia responded by first pushing the Georgians out from the disputed territories, and then proceeded to cripple Georgia's military infrastructure by attacking Georgia proper, occupying territory, and destroying military equipment. An EU-brokered cease-fire had Russian forces withdraw from Georgia proper, but did not require the Russians to evacuate Abkhazia and South Ossetia. Moscow then recognized the independence of Abkhazia and South Ossetia and is negotiating with them to create permanent Russian military installations on their territories.

The attack on Georgia led NATO to suspend its ties with Russia and also effectively killed the U.S.-Russian civil nuclear agreement in the U.S. Senate that would have permitted much greater collaboration between U.S. and Russian firms in providing nuclear technology for civilian use in power generation. While NATO restored its relations with Russia in 2009, the Georgia war led to a major deterioration in U.S.-Russian relations, since it was

seen by many in Washington as proof that Russia under Putin (and now Medvedev) was becoming more aggressive and confrontational.

The Georgian war of 2008, followed by another shutoff of natural gas to Ukraine in early 2009, demonstrated that, in contrast to Moscow's resigned acceptance of earlier waves of NATO expansion eastward, Russia was now prepared to take action, including the use of military and economic instruments of power, to defend what it considers to be its sphere of influence—and was willing to accept a worsened relationship with Washington as a result. Indeed, as M. K. Bhadrakumar, a former Indian diplomat and keen observer of the U.S.-Russian relationship, noted:

> The ties grew increasingly strained. The conflict in the South Caucasus last August led to a dangerous drift in relations between Russia and the North Atlantic Treaty Organization (NATO). It added to the list of contentious issues already complicating the US-Russia relationship—deployment of components of the US missile defense system in Central Europe, NATO's eastward expansion, rivalries over Caspian energy resources, simmering discords in the Black Sea region, and so on. Enveloping all these issues, an atmosphere of distrust descended on US-Russia ties.[66]

Because Senator John McCain was a hard-line critic of Russia and of Putin in particular,[67] his defeat in the November 2008 U.S. presidential election led to some optimism that Barack Obama would be able to improve ties with Russia. During the campaign, Obama, while critical of a number of Russian domestic and foreign policies, had argued that there were still a number of common interests between Moscow and Washington that could serve as the basis for a new cooperative relationship. Several months after his inauguration, the Commission on U.S. Policy toward Russia, cochaired by former senators Gary Hart and Chuck Hagel, called for finding compromises with Russia (without compromising core U.S. interests). The report noted that an

> American commitment to improving US-Russian relations is neither a reward to be offered for good international behavior by Moscow nor an endorsement of the Russian government's domestic conduct. . . . [I]t is an acknowledgement of the importance of Russian cooperation in achieving essential American goals: from preventing Iran acquiring nuclear weapons, dismantling al Qaeda and stabilizing Afghanistan, to guaranteeing security and prosperity in Europe.[68]

There were initial high hopes that the Obama administration's call for a "reset" in the relationship might bear fruit. In contrast to the growing division in the national security team of the second Bush administration over Russia, Obama's vision was generally shared by other key players within the administration—including Secretary of State Hillary Clinton, Defense Secretary Gates, National Security Advisor Jim Jones, and the senior director for Russia at the National Security Council, Michael McFaul. As McFaul put it, "The appropriate policy response to these new developments [e.g., the development of a more authoritarian regime inside Russia] is not a return to containment or isolation of Russia. Rather, a more substantial agenda between the Russian and American governments would create

more permissive conditions for democratic renewal inside Russia." National Security Advisor Jones has talked about the "reset" creating conditions that might lead to the long-term integration of Russia inside the Euro-Atlantic community.[69]

Yet some of the reasons for tensions between Moscow and Washington did not disappear with the new administration. Secretary of State Hillary Clinton acknowledged during her confirmation hearing in 2009 that the United States cannot disregard Russian domestic policy when considering the bilateral relationship between the two countries, noting that while the new administration wanted to pursue "cooperative engagement with the Russian government on matters of strategic importance" it would still be "standing strongly for American values and international norms."[70]

Clinton traveled to Geneva in March 2009 to meet with Foreign Minister Sergei Lavrov (where the infamous "reset button" was presented) to lay the groundwork for the talks Obama had with Medvedev in London at the G-20 summit in April. After the first encounter between the presidents, Lavrov praised the "new quality" of the relationship.

Yet Stephen Sestanovich, a senior Clinton administration official who dealt with Russia policy, believed that the "reset" cannot deal with the current impasse in relations. Acknowledging that both sides are trying to avoid a "new Cold War," he nevertheless saw real obstacles still in place:

> You're absolutely right that neither side liked where the relationship stood at the end of last year. There was enthusiasm on both sides for the idea of pressing the reset button. But that was a term without a lot of content. . . . [T]he two sides have different expectations and understandings as to what that means. Russia's view has tended to be that the United States has to renounce the policies that Moscow found most objectionable: NATO enlargement, missile defense [in Eastern Europe]. The American view has tended to be that the relationship should be reset by reaching arms control agreements, above all renewing the START I treaty. NATO enlargement actually seems to be on a somewhat slower track now. The administration's budget for missile defense is down. On that basis, you could imagine a different and more productive relationship, but not if the Russians are determined to get explicit agreements about every aspect of it. They've been saying recently that they can't rely on political understandings. They need legal commitments.[71]

So while the Obama administration has talked about a "resetting" of the relationship, the underlying factors that led to the growing chill between Washington and Moscow have remained unresolved.

THE OBAMA-MEDVEDEV SUMMIT AND ITS AFTERMATH

President Obama traveled to Moscow for a summit meeting with President Medvedev in early July 2009. Prior to his departure, he dismissed as "outdated" what he called the "old, Cold War approaches to U.S.-Russian relations."

In the days before his arrival in Moscow, however, members of his administration sought to assuage concerns that the United States would, in the name of the "reset," make

concessions to Russia on NATO expansion. For instance, McFaul bluntly declared, "We are not in any way, in the name of the reset, abandoning our very close relationships with these two democracies, Ukraine and Georgia."[72] Once in Moscow, the president, in his speech at the New Economic School, again rejected the notion that Russia should have a sphere of influence in its neighborhood, supported the right of Russia's neighbors to pursue NATO membership, and indicated that if the United States believes the missile defense system in Poland and the Czech Republic protects U.S. interests, his administration would go forward with the deployment.

Russian commentators were also skeptical that the summit could settle the issues that had led to increased tensions in the U.S.-Russian relationship. An editorial in the newspaper *Moskovskii Komsomolets* asked, "Can the leopard change his spots? America's main strategic course remains unchanged, irrespective of whoever occupies the president's chair."[73]

But if neither side was expecting that all disputes would be solved at the summit, there was optimism that a process would be started in which there would be a frank discussion of the issues—something both presidents alluded to in their press conference. Gleb Pavlovsky, a Kremlin advisor, noted, "I am not an optimist about the upcoming talks, but they will be the start of something. I do think Obama has a rational approach, and I believe that an intellectual discussion will take place."[74]

Both presidents decided to move ahead on several issues. Full military-to-military relations, interrupted after the Georgia war, were restored.[75] An agreement was signed to permit the transit of military supplies through Russian territory for the use of U.S. and NATO forces in Afghanistan—and Obama hailed this as "a gesture that indicates the degree to which, in the future, Russian-U.S. cooperation can be extraordinarily important in solving a whole host of these very important international issues."[76] Both presidents initialed a "memorandum of understanding" that is designed to provide guidance for reaching a new arms control agreement to replace the START treaty—setting a range of between 500 to 1,100 "carriers of strategic arms" and 1,500 to 1,675 warheads.[77]

More important, both presidents agreed to set up a bilateral, "interagency" commission to oversee the U.S.-Russian relationship, in order to try and move past the existing blockages in the bureaucracies of both countries. At the press conference on 6 July Obama noted:

> President Medvedev and I are creating a U.S.-Russian Bilateral Presidential Commission to serve as a new foundation for this cooperation. Too often, the United States and Russia only communicate on a narrow range of issues, or let old habits within our bureaucracy stand in the way of progress. And that's why this commission will include working groups on development and the economy; energy and the environment; nuclear energy and security; arms control and international security; defense, foreign policy and counterterrorism; preventing and handling emergencies; civil society; science and technology; space; health; education; and culture. And this work will be coordinated by Secretary Clinton and Minister Lavrov, and Secretary Clinton will travel to Russia this fall to carry this effort forward.[78]

The verdict on the summit was that while the two presidents changed the tone of U.S.-Russian discussions, there were no breakthroughs. "[L]ong-standing differences—on U.S. missile defense plans, human rights and the response to Iran's nuclear ambitions—remained unbridged," was the conclusion reached by the *Los Angeles Times*.[79] Sergei Markadanov, of the Institute for Political and Military Research in Moscow, offered his assessment:

> The results of the first visit are preliminary and a 'reset' is not just one meeting of the presidents of the U.S. and Russia; it's a process. Diplomacy is not only linked to leaders, but to diplomats and everyday things. We are only just at the beginning.
>
> Not all the priorities can be considered as common between our countries. Two weeks after Obama's visit, the U.S. vice president, Joe Biden, will go to Kiev and Tbilisi to show that the 'reset' of relations between U.S. and Russia will not lead to a worsening of relations between them and Washington.[80]

Viktor Kremenyuk, deputy director of Russia's USA-Canada Institute think tank, concluded: "The presidents found a common language. It is too soon to say whether this understanding will last and if there will be real progress."[81]

An important test will be how the structures set up at this summit will function. Will the memorandum signed on arms control serve as a relatively noncontroversial basis for a treaty, or will negotiations become contentious, especially if Moscow continues to insist on a link between nuclear arms reduction and U.S. plans for missile defense? How will this new presidential commission work—will it be able to supervise all aspects of the U.S.-Russian relationship and push through bureaucratic blockages, or will it wither on the vine? How will Washington maintain a balance between improving relations with Russia and continuing to support possible allies like Ukraine and Georgia if Russia's relations with those two states continue to erode? Can the divisive issues that drove U.S.-Russian relations, by the end of 2008, to their lowest point since the end of the Soviet Union be managed? Sam Greene, deputy director of the Carnegie Endowment's Moscow Center, sums up the challenge: "If this process is going to keep up momentum, it needs to be clear to politicians in both capitals that the presidents are putting a lot of their own political capital into the process."[82]

In the aftermath of the Moscow summit, there have been a number of confusing signals. Vice President Biden traveled to Ukraine and Georgia at the end of July 2009 to reassure both Kyiv and Tbilisi that the United States would support them in their hopes to join NATO and that there were no plans by the Obama administration to barter away NATO expansion in return for greater Russian support on other issues. However, the defeat of Viktor Yushchenko, the pro-Western hero of the 2004 Orange Revolution in Ukraine—and his replacement by Viktor Yanukovych, the erstwhile villain of the 2004 events—in Ukraine's 2010 presidential elections has taken the question of that country's membership in NATO off the table, at least for now. Georgia's application is likewise on hold for the moment.

In September 2009 Defense Secretary Gates and the president announced the termination of the plans to deploy a missile defense system in Poland and the Czech Republic,

citing concerns about technical feasibility and cost. Critics denounced the decision as a "surrender" to Russia, while others hoped that this policy shift would cause Moscow to change course on Iran policy. As American policy analyst Paul Saunders noted:

> If there is no behind-the-scenes understanding with Russia's leaders, Mr. Obama's decision to scrap the Polish and Czech missile defense sites is both bold and quite risky. Much now hinges on Russia's interpretation of what happened and why, its appreciation of U.S. politics and decision-making, and its true interest in cooperating with the United States.[83]

However, the United States announced it would continue with the deployment of a Patriot missile battery in Poland.[84] The Obama administration pledged it would continue to concentrate on shoring up defenses against short- and medium-range missiles coming from Iran, using shipboard systems and defenses located in a variety of locations. In February 2010 both Romania and Bulgaria announced negotiations were under way with Washington about possible deployment of missile defense components in their countries. Once again, missile defense has returned as an irritant in the U.S.-Russian relationship.

Russia's own policy has also been confusing. President Medvedev appeared to be much more amenable to considering stronger sanctions on Iran, and after the APEC summit in November, President Obama proclaimed, "The reset button has worked." But Prime Minister Putin, Foreign Minister Lavrov, and other officials have been far less encouraging, signaling that there remains a deep division within the Kremlin about the next step with Iran.[85] Russia also held war games in the Baltic region for the first time in 25 years in September, involving more than 12,000 troops, over 200 tanks, 470 other armored vehicles, and 100 aircraft. This exercise alarmed new members of NATO like Poland and the Baltic states, leading the alliance to have to begin to develop contingency plans for repulsing a possible Russian assault. On the other hand, Russia has moved to repair its relations with NATO, especially in facilitating the transport of supplies to Afghanistan. Human rights issues continued to have an impact on the bilateral relationship, with the latest incident the death of Sergei Magnitsky, a lawyer who was defending Russia's largest hedge fund, Hermitage Capital, against tax evasion charges. Magnitsky was arrested in 2008 and held in prison, denied medical treatments for his health conditions, and died in November 2009.[86]

AND THE TREATY EXPIRES . . .

On 5 December 2009, the START treaty expired. This treaty, ratified in 1991, is credited with significantly lowering the threat of nuclear war through reductions in nuclear weapons, data sharing, satellite monitoring, and, perhaps most important, creating a robust system of on-site inspection protocols.[87]

The Obama administration had hoped to demonstrate results from its "reset" by quickly moving on a new treaty, but despite the "memorandum of understanding" signed over the summer, negotiations did not move as quickly as expected. Issues of "trust" have complicated matters—American concerns about the access granted to inspectors in Russia, Russian fears that the United States will count the retirement of obsolete weaponry as fulfilling

arms control targets. Also complicating matters is the need for the Obama administration to bring home an agreement that could be ratified in the Senate—where there are already voices concerned that any replacement treaty not place too many restrictions on U.S. nuclear and conventional capabilities or allow Russia to expand its arsenal with new weapons. At the same time, Russia was pushing for more explicit discussion of missile defense within the treaty.

The failure to reach a new agreement by 5 December showed that there were still deep-seated problems in the U.S.-Russian relationship that could not be easily overcome. The Obama administration had hoped to use the successful conclusion of negotiations to demonstrate that its Russia policy was generating success. Russian and American negotiators, however, were unable to finish the text of a new treaty in time. Nor was a treaty ready for signature prior to the president's acceptance of his Nobel Peace Prize, as some in the White House had hoped. When Obama and Medvedev met on the sidelines of the Copenhagen climate change talks in mid-December 2009, they were unable to break through the impasse. Later that month, Prime Minister Putin made it clear what the problem was: "The problems of anti-missile defense and offensive weapons are very tightly linked to each other." Russia reserves the right to begin building a new generation of more effective offensive nuclear weapons as long as the United States continues to pursue some form of missile defense.[88] The United States responded by stating that the follow-on negotiations for the START treaty should not be the place missile defense is addressed, and that Washington preferred a "separate venue" for discussing that question. Rupert Wingfield-Hayes, the BBC correspondent in Moscow, observed that this unsettled issue continues to complicate the efforts to finalize a new agreement.[89]

After the visit of National Security Advisor Jim Jones and Chairman of the Joint Chiefs Mike Mullen to Moscow in January 2010, the logjam appeared to be broken. Both sides reached an "agreement in principle" that resolved the outstanding questions on access to sites and the sharing of missile-test data—and this agreement in principle is supposed to serve as guidance for the drafting of the final language of the treaty.[90] But the challenge is to produce a document that both sides will accept.

The difficulties in negotiating with the Russians continue to be compounded by congressional suspicion of Russia. The *New York Times* noted the challenges facing the administration in getting the successor to the START treaty ratified, because after "their tough negotiations with Moscow are completed, they will have to work at least as hard to win Senate ratification."[91] All Republican members of the Senate, plus independent Joe Lieberman, sent a letter to the president questioning the value of further U.S. nuclear cuts; likewise, Democrats in the upper house, including Max Baucus (D-MT), Jon Tester (D-MT), Kent Conrad (D-ND), Byron L. Dorgan (D-ND), and Mary L. Landrieu (D-LA), have raised concerns with Secretary Gates.[92] Senator John Thune (R-SD) crystallized the opposition of some to a new treaty by noting,

> The United States should not pay for what is free. Russia's nuclear numbers will decline dramatically in the coming years with or without an arms control treaty. The United

> States should not make important concessions in return for something that will happen in any event.[93]

All of this still demonstrates that the "reset" has not fully changed the climate of U.S.-Russian relations.

George W. Bush promised a new partnership with Russia, but that proved to be elusive. Barack Obama hoped that a "reset" in relations with Moscow would quickly generate positive change, but those expectations have not been borne out by the experience of his first year in office. One can only conclude that the ongoing "baggage" in the relationship inherited from one administration to the next has precluded any sudden, rapid transformation.

Notes

1. This case has been revised and updated to take into account both current events and student feedback since it first appeared in the 11th edition of the casebook.
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Bigger Carrots, Bigger Sticks: U.S. Policy toward Iran

HAYAT ALVI

> Dennis Ross and [President] Obama put together a policy they called "bigger carrots, bigger sticks."
>
> —Massimo Calabresi[1]

> A preoccupation with conflict is blinding us to the opportunities for the future. The alternative is to be carried by this momentum towards a conflict that nobody desires but which no one will be able to avoid, the consequences of which will make Iraq look like the cakewalk it was prophesized to be.
>
> —Prof. Ali Ansari[2]

INTRODUCTION

The famous Persian poet Omar Khayyam wrote:

> Some for the glories of this world; and some
> Sigh for the Prophet's Paradise to come;
> Ah, take the cash, and let the credit go,
> Nor heed the rumble of a distant drum![3]

This combination of the pursuit of worldly glories and mystical religious whims, while failing to heed the warnings of others (the "rumble of a distant drum"), aptly describes Iran today.

Iran is causing increasing alarm in the West, Israel, and neighboring Arab states because of the way the theocratic regime has been behaving regarding its nuclear ambitions. The United States and Iran continue to distrust each other, as relations soured since the 1979 Islamic Revolution and U.S. embassy officials were held hostage in Tehran for 444 days. Iran's current state of affairs has led to provocative behavior, not unlike the case of North Korea. How does one deal with a totalitarian religious clerical regime surrounded by wealthy and powerful clienteles and supported by a zealously hard-line revolutionary-minded military? What can be done to prevent this regime from becoming a nuclear military power? How do rational minds in Western democracies even entertain engagement or confrontation with a theocratic republic whose head of state is called the "supreme leader"? These are the dire issues and dilemmas that the Obama administration currently faces.

In a February 2009 press conference, President Barack Obama articulated the U.S. strategy for engaging Iran. In his statement, the president indicated that "diplomacy and any other resources" are being utilized in the effort to engage Iran.[4] He also mentioned that the

national security team is reviewing "constructive dialogue where we can directly engage them."[5]

President Obama warned that "a nuclear Iran could set off a nuclear arms race in the region that would be profoundly destabilizing," but he also added that "there is a possibility of a relationship with mutual respect and progress." He concluded his comments about Iran by saying that "even as [Iran] has some rights as a member of the international community, with those rights come responsibilities."[6] The United States has taken on the responsibility of upholding and attempting to implement the global policy of nuclear nonproliferation. However, Iran is not like the Soviet Union during the Cold War. Iran is a different species altogether: walls and empires might crumble from secular ideological and military competition, but when religion is used to legitimize state power, infallibility becomes unquestionable and enforceable by brute force. That is one of the great dangers of Iran today.

Nonetheless, despite the media depictions of the clerical regime as irrational, fanatical, and even apocalyptic, in reality the Iranian regime is very calculative and pragmatic as far as its own national interests are concerned. How, then, should the Obama administration approach engagement with Iran? What, if anything, can be done to contain a nuclear-empowered Islamic Republic of Iran (IRI)?

In order to address these questions, first one must understand Iran's demography and geography, and the history of U.S.-Iranian relations.

BACKGROUND: U.S.-IRANIAN RELATIONS

During the Cold War, the United States and Iran, which was ruled by the shah (monarch) of Iran at the time, were on friendly terms. In 1953, the shah of Iran, Mohammad Reza Shah Pahlavi, was forced out of power by political opposition forces, and a democratically elected prime minister, Mohammad Mosaddegh, became head of state. With the help of the U.S. Central Intelligence Agency (CIA), Reza Shah Pahlavi deposed Mosaddegh, and the king was reinstalled on the throne. Mosaddegh was arrested for treason, and initially placed in solitary confinement. He died under house arrest in 1967. Relations between the United States and the shah continued to flourish and strengthen. The CIA and the Israeli intelligence service, the Mossad, both served as models for the shah's secret police force, the dreaded SAVAK, which terrified the masses. SAVAK tortured and killed political opponents of the shah, and became the most feared institution in the country.

In the early 1970s, the United States encouraged the shah to diversify Iran's economy and reliance on energy (mainly oil) resources. Heeding this advice, the shah proceeded to launch a nuclear energy program, with American assistance, and plans to build 23 nuclear reactors were set into motion.[7] Eventually, Iran also received assistance from India, France, South Africa, and West Germany during the mid-1970s.[8] The stipulation for the nuclear program focused on Iran's energy needs, and not the development of nuclear weapons. Iran is a signatory to the Nuclear Non-Proliferation Treaty (NPT) since July 1968, and ratified it in 1970.[9]

Figure 1: Iran at a Glance
Source: "Executive Summary: Iran at a Glance," *Jane's Sentinel Security Assessment—The Gulf States,* 28 July 2009, available at www.james.com

Area	1,648,000 km^2 (636,296 sq miles)
Language	Persian (Farsi), Azeri, Kurdish, Luri, Turkmen, Arabic, Baluchi, and a number of other languages spoken by national minorities
Religion	Shia Islam, Sunni Islam; there are also small Christian, Jewish, Zoroastrian, and Baha'i communities, comprising around 2 percent of the population (a significant number of people do not reveal their religious beliefs for fear of persecution)
Population	70,495,782 (2008, World Health Organization)
Neighbors	Azerbaijan, Armenia, Turkmenistan, Turkey, Iraq, Pakistan, Afghanistan
Capital City	Tehran
Primary Port	Bandar 'Abbas
Primary Airport	Tehran Imam Khomeini International Airport
Currency	Iranian rial (IRR)

In 1979, a grassroots social revolution deposed the shah of Iran, and Ayatollah Ruhollah Khomeini came to power, establishing a Shiite theocracy in the new Islamic Republic of Iran. Anti-American sentiments ran strong in the new revolutionary republic, and a group of revolutionary activists stormed the U.S. embassy in Tehran and held embassy officials hostage for 444 days. Around the time of the revolution, American intelligence learned that the shah had secretly planned to develop nuclear weapons.[10] However, the new, postrevolution Iranian regime claimed that Iran has no need for nuclear energy, at least at that time.[11]

Ayatollah Khomeini had long been a thorn in the shah's side, since the 1960s, and was exiled first to Iraq, and then to France. From exile in France, Khomeini smuggled audio cassette tapes containing recordings of his sermons and revolutionary ideals into Iran. He denounced the shah in these recordings and literature, and called on the masses in Iran to overthrow the unjust and corrupt monarchy. Khomeini returned to Iran from exile in February 1979, and successfully launched the revolution, along with new theocratic institutions that granted full state power and authority to the "supreme leader," Ayatollah Khomeini himself.

Figure 2
Source: CIA, "Iran" (political, 2001), available at University of Texas Libraries, http://www.lib.utexas.edu/maps/middle_east_and_asia/iran_pol01.jpg

The hostage crisis created domestic political dilemmas for the United States, and President Jimmy Carter was not reelected, being replaced by Ronald Reagan. Diplomatic relations between the United States and Iran ended, and this also marked the end of a long era of friendly U.S.-Iranian relations during the shah's rule. In 1980, Iraq, led by Saddam Hussein, invaded Iran, triggering the Iran-Iraq War (1980–1988). The United States principally supported Iraq, but also clandestinely forged arms deals with Iran, which came to be known as the Iran-Contra scandal. Superpower involvement during the Iran-Iraq War can be described as shifting calculations and interests, according to changing circumstances and configurations on the ground:

> In early 1987, both superpowers indicated their interest in the security of the region. Soviet deputy foreign minister Vladimir Petrovsky made a Middle East tour expressing his country's concern over the effects of the Iran-Iraq War. In May 1987, United States

> assistant secretary of state Richard Murphy also toured the Gulf emphasizing to friendly Arab states the United States commitment in the region, a commitment which had become suspect as a result of Washington's transfer of arms to the Iranians, officially as an incentive for them to assist in freeing American hostages held in Lebanon. In another diplomatic effort, both superpowers supported the UN Security Council resolutions seeking an end to the war.
>
> The war appeared to be entering a new phase in which the superpowers were becoming more involved. For instance, the Soviet Union, which had ended military supplies to both Iran and Iraq in 1980, resumed large-scale arms shipments to Iraq in 1982 after Iran banned the Tudeh (Iranian Communist Party) and tried and executed most of its leaders. Subsequently, despite its professed neutrality, the Soviet Union became the major supplier of sophisticated arms to Iraq. In 1985 the United States began clandestine direct and indirect negotiations with Iranian officials that resulted in several arms shipments to Iran.
>
> By late spring of 1987, the superpowers became more directly involved because they feared that the fall of Basra might lead to a pro-Iranian Islamic republic in largely Shia-populated southern Iraq. They were also concerned about the intensified tanker war.[12]

The 2003 U.S. invasion of Iraq provided both opportunities and insecurity for Iran. Regime change in Iraq was a tremendous favor to Iran. By removing Iran's archenemy, Saddam Hussein, the United States inadvertently opened Iraq to increasing Iranian influence and involvement, including support for insurgents and militias. At the same time, the presence of American troops in Iran's next-door neighbor has been a source of concern, suspicion, and anxiety for the Islamic Republic. Especially given the history of soured U.S.-Iranian relations, and Iran's ambitions for establishing its regional dominance, U.S. power projection in the Middle East has rattled the nerves of the Iranian regime. Now, with the nuclear program crisis, as well as tougher sanctions on Iran, the animosities and mutual distrust continue to run deep.

However, the Obama administration is attempting more open and direct diplomacy and dialogue with the Iranian regime for the first time. Although backdoor U.S.-Iranian dialogue has taken place, there have been no successes or breakthroughs in normalizing U.S.-Iranian relations as of yet. In the meantime, the Iranian regime has been making provocative statements and maneuvers that contradict any intention or gesture toward diplomacy and cooperation.

IRAN'S NUCLEAR PROGRAM AND SECURITY CONCERNS

During the Iran-Iraq War, Iraq bombed Iran's two nuclear facilities in Bushehr, and soon afterward, Iran announced its resumed interest in developing a nuclear program.[13] In 1985, Syria, Libya, and Iran proclaimed that "they should all develop nuclear weapons to counter the Israeli nuclear threat."[14] Then, in 1995, Russia and Iran signed a cooperation agreement to construct a lightweight water reactor in Bushehr, although in concert with international monitoring and guidelines.[15] In 2002, U.S. surveillance, together with reports

Figure 3: Overview of Iran's Nuclear Programs
Source: "Strategic Weapons Systems, Iran," *Jane's Sentinel Security Assessment—The Gulf States*, 13 May 2009

Name	Comment
Arak	Heavy-water production and natural uranium reactor
Bandar 'Abbas Project	Work is carried out on the integration of nuclear systems with ballistic missiles
Bushehr Project	A facility damaged in the Iran-Iraq War and currently under reconstruction
Chalus	An underground nuclear weapons development facility built into the Elburz Mountains
Darkhovin Site	Iran's dual-purpose nuclear site in the south under construction with Chinese assistance
Isfahan Project	The center of the nuclear industry, with its own reactor and a Chinese neutron sparker; by early 2004, the site was estimated to have been 40 percent completed
Kalaye Electric Company	A site of enrichment activities in Tehran
Karaj	A previously undeclared storage facility related to the laser enrichment program near Tehran
Lashkar Abad	A pilot plant for laser enrichment established in 2000; Iranian authorities claim that all equipment at Lashkar Abad was dismantled in May 2003, and transferred to a storage facility at Karaj
Moalem Kelayeh Project	Located at Qazvin; in order to keep its purpose secret, no foreign expertise is used at this facility
Natanz*	Located between Isfahan and Kashan, construction began in 2000, first claimed to be a facility for generating electricity; later came to be known for uranium enrichment for nuclear energy; under IAEA inspections since 2003
Tabas	Alleged site of secret nuclear reactor built with Chinese and North Korean assistance
Yazd Project	Built underground close to a uranium extraction site in 1989–1990, its purpose is unknown

*Source: "Natanz (Kashan)," GlobalSecurity.org, http://www.globalsecurity.org/wmd/world/iran/natanz.htm.

from Iranian dissidents, discovered uranium-enrichment facilities in Arak and Natanz, and the United States accused Iran of seeking nuclear weapons development.

Starting in 2003, Iran allowed International Atomic Energy Agency (IAEA) inspections, and reportedly suspended uranium enrichment.[16] However, Iran resumed uranium enrichment in 2005, although claiming that it is for peaceful energy use only. Starting in 2006, the UN passed a series of resolutions imposing economic sanctions against Iran, in the effort to compel the regime to cease uranium enrichment. Subsequent sanctions have continued to be imposed on Iran in 2007 and 2008, and currently even tougher sanctions are planned, as Iran has not complied with international safeguards. Furthermore, "Iranian officials ruled out a freeze in uranium enrichment during talks in Geneva" in late 2009.[17]

THE QOM FACILITY

Around the time of the September 2009 G-20 economic summit in Pittsburgh, the IAEA officials met with President Obama and his national security advisor, James Jones, to discuss a letter from Iran to the IAEA, disclosing a clandestine nuclear enrichment facility in a mountain near the city of Qom.

According to Laura Rozen, the United States had known about this facility near Qom for years. Iran has been building it since 2005.[18] However, with Iran sending the disclosure letter to the IAEA, the Obama administration was compelled to prepare "for a major public intelligence disclosure that it had not planned to make."[19] The letter sparked a flurry of intelligence briefings: "[On Wednesday] intelligence officials from the U.S., Britain, and France briefed IAEA officials in Vienna on what they knew about the Qom facility. That same day, in New York, Obama briefed Russian president Dmitry Medvedev. Then on Thursday, intelligence officials briefed congressional leadership in Washington, while Chinese president Hu Jintao was informed in New York."[20]

When President Obama made the announcement about the Qom facility on Friday morning, he was "flanked by Britain's Gordon Brown and France's Nicolas Sarkozy in a show of international unity. As Obama spoke, the administration sent out background guidance to Congress and the press with more information on the Qom facility."[21]

IRAN'S MAIN SECURITY CONCERNS

In order to effectively engage Iran, a comprehensive approach is necessary. The United States and Western powers need to understand and address Iran's security needs. Progressive engagement constitutes a holistic approach, and not an exclusive focus only on the nuclear issue.[22]

Iran has numerous security concerns, pertaining to both internal and regional security, and they are intrinsically linked to Iran's national interests. Some of these security concerns include fear of U.S.-led regime change in Iran, energy security, preservation of the Islamic revolutionary ideology and the theocracy, fulfillment and preservation of Iran's national interests in the region, the right to enrich uranium inside Iran, Israel's military power and

dominance in the region, relations with neighboring Arab states, economic trade and security, internal threats to the Iranian regime, and development of an asymmetric deterrence capability.

First, the 2003 U.S. invasion of Iraq and regime change that toppled Saddam Hussein stirred worries in Iran that the clerical regime would be the next target. U.S. troops' presence in the Middle East region is also a major concern of the Iranian regime. Although regime change in Iraq was beneficial to Iran in getting rid of its enemy, Saddam Hussein, this does not preclude Iran from viewing U.S. presence in the region as threatening to Iranian interests. Iran calculates its own involvement in the region carefully (e.g., Iraq, Afghanistan), and while it might cooperate at one level, the Iranian regime harbors considerable distrust toward U.S. intentions in the region. Along these lines, Iran also fears potential Israeli and/or U.S. strikes against Iran's nuclear facilities.

Second, Iran faces critical energy security concerns. Iran is the second-largest oil producer in the Organization of Petroleum Exporting Countries (OPEC), and holds the world's second-largest natural gas reserves. However, ironically, Iran imports refined oil for its own consumption, mainly because it does not have the refining capabilities. "Iran's oil production has been declining steadily from its pre-revolution peak of six million barrels per day to its present four million barrels per day. This is mainly caused by the ongoing effects of war, sanctions, low investment, and depletion."[23]

Third, the Iranian regime endeavors to preserve the Islamic revolutionary ideology and the theocracy of the Islamic republic. Upon the revolution, one of Ayatollah Khomeini's expressed agendas included the preservation and export of the revolutionary ideology. Today, internal and external threats to the regime also threaten the sustainability of the Islamic revolutionary ideology. Connected to this are the strained relations between Iran and neighboring Arab states, especially the Gulf Cooperation Council (GCC) members, based on political and ideological differences. External support for political opposition groups in Iran is another serious concern for the regime. The Green Movement as well as various antiregime militias cause problems for regime security and stability.

Fourth, being placed in a highly geopolitically strategic location, Iran is determined to pursue and preserve its national interests in the region, which include co-opting various Shiite populations. The regime's national interests also include the right to enrich uranium inside Iran, and ensure Iran's economic and trade security.

Moreover, Iran views Israeli military power in the region as threatening, and the regime cites Israel's regional dominance as a reason for empowering and improving its own military. Although the regime denies it is seeking to weaponize nuclear power, clearly Iran is attempting to develop an asymmetric deterrence capability. This would advance Iran to the military caliber of Israel, surpassing conventional military capabilities.

U.S. NATIONAL SECURITY POSTURE: DEALING WITH IRAN

In January 2010, during a meeting with the prime minister of Qatar, U.S. secretary of state Hillary Clinton addressed the issue of dealing with Iran's nuclear program and U.S.-Iranian engagement strategies. Responding to a reporter's question about this, Secretary Clinton said: "Now, our approach, as you know, has always proceeded on two tracks; we have an engagement track and a pressure track."[24] Furthermore, Secretary Clinton added:

> We want to keep the door to dialogue open. But we've also made it clear we can't continue to wait and we cannot continue to stand by when the Iranians themselves talk about increasing their production of high-enriched uranium and additional facilities for nuclear power that very likely can be put to dual use. So we have already begun discussions with our partners and with likeminded nations about pressure and sanctions. . . . Our goal is to pressure the Iranian Government, particularly the Revolutionary Guard elements, without contributing to the suffering of the ordinary Iranians who deserve better than what they currently are receiving. . . . We're going to continue on our dual-track approach.[25]

The U.S. ambassador to the UN, Susan Rice, has supported the diplomacy track with Iran. Ambassador Rice said that "the United States will pursue direct diplomacy with Iran, the Obama administration is undertaking an intensive policy review toward Iran even as it gets its new team members into place."[26]

Back-channel meetings with Iranian officials have taken place. Former defense secretary William Perry and a delegation of American nonproliferation and Iran experts "held a series of meetings in European cities with Iranian officials under the auspices of the Pugwash group. (Pugwash, a group founded in 1957 by an international group of scientists, received the Nobel Peace Prize in 1995 for advocating for the elimination of nuclear weapons.) Perry served as a member of the Obama campaign's national security working group."[27] The attendees included Iranian ambassador Ali Asghar Soltanieh, who is also the permanent representative to the IAEA in Vienna.[28] According to Laura Rozen,

> A person familiar with the Pugwash U.S.-Iran meetings declined to speak on the record or provide many details, except to confirm Perry's participation and say that they involved four meetings in different cities in Europe over the past year. They were among the most interesting and most valuable of such meetings that have occurred, *The Cable* was told. (Another discreet, high-level Track Two dialogue series between the U.S. and Iran has been conducted by Thomas Pickering, the former undersecretary of state for political affairs and United Nations Association–U.S.A. co-chair, who has co-written about his experience with fellow participants William Luers, the former UNA-U.S.A president and U.S. ambassador to Czech Republic, and Jim Walsh for the *New York Review of Books*).[29]

Meanwhile, the Obama administration is trying to find ways to support Iran's opposition "Green Movement,"[30] which has been contesting the results of the June 2009 elections. The Iranian regime's crackdown on dissidents has been harsh, violent, and extrajudicial.

Ironically, just as Ayatollah Khomeini used audio cassette recordings to bring down the shah, the Green Movement has been using modern information technology, like Twitter, YouTube, Facebook, and cell phones, to record and broadcast the current regime's abuses.

In response, the White House is devising targeted sanctions to "punish the Iranian entities and individuals most directly involved in the crackdown on Iran's dissident forces . . . rather than just those involved in Iran's nuclear program."[31] One of these prime targets is Iran's Revolutionary Guard Corps (IRGC), which wields considerable military and economic power, and which protects the offices of the supreme leader and President Mahmoud Ahmadinejad.[32] The IRGC holds shares in various telecommunications and manufacturing companies in Iran, and the Obama administration, with the help of the U.S. Treasury Department, is going over lists of such companies for targeted sanctions.[33] The Obama administration also believes that the current Iranian regime is on shaky ground, and conditions might be conducive to a revolution not unlike the 1979 Islamic Revolution that overthrew the shah of Iran. It is hoped that targeted sanctions can help the Green Movement, and perhaps contribute to the overthrow of the current regime. However, according to Mohsen Milani, additional crippling sanctions would hurt the Iranian people, including the activists in the Green Movement.[34]

Some Iran watchers are urging the Obama administration to support the Green Movement more openly and proactively. In the *New Republic*, the director of Iranian studies at Stanford University and codirector of the Iran Democracy Project, Abbas Milani, had this to say about the Obama administration's approach to dealing with Iran:

> The president of the United States has reportedly written two unsolicited and still unanswered letters to [the supreme leader,] Khamenei; he has gone out of his way not to offer full support to the regime's opponents; he has asked Congress to delay the passage of a bill authorizing new sanctions on the regime. All of this only to be rebuffed openly by Khamenei and ridiculed by his cohorts. In the meantime, the regime has continued its work on the nuclear program, increased its involvement in Yemen by supporting the Shia insurgency that weakens the central government and creates a vacuum for Al Qaeda, and increased its support to Afghan rebels through its proxies. For years, regime apologists in America have suggested that U.S. efforts to negotiate with Iran are half-hearted, or that all the clerics in Iran want is some respect. Events of the last seven months show the problem is not in Washington, but in Tehran, and with the nature of the regime. Khamenei knows that anti-Americanism is his raison d'être.
>
> . . . Policy is invariably made based not on an exact blueprint of the future but on a prudent assessment of ascending and descending forces in a situation, and hopefully, on moral values. The U.S. can either stand with the people of Iran, and support their quest for democracy—a democracy, incidentally, that offers the only solution to the nuclear problem as well—or it can side with those who defend the moribund regime.[35]

The pressure weighs heavily on the United States to take the next step in dealing with Iran, since the international community has not reached consensus pertaining to sanctions.

The latest P5+1 (i.e., the UN Security Council five permanent members plus Germany, also called the "Iran Six") meeting in New York over the weekend of 15 January 2010 ended in failure to impose additional UN-led sanctions on Iran. This was mainly due to China's opposition.[36]

At the same time, the U.S. secretary of defense, Robert Gates, has "repeatedly discounted the possibility of a military strike, saying that it would only slow Iran's nuclear ambitions by one to three years while driving the program further underground."[37] Furthermore, evidence shows that Iran is constructing deep tunneling projects for civilian and military purposes, and tunnels can be used for further hiding its nuclear program. This complicates military plans to contain Iran's nuclear ambitions. In fact, "even the Israelis concede that solid rock can render bombs useless," referring to Iran's mountainous regions, in which the regime is actively building hundreds, maybe even thousands of tunnels.[38] "American war planners see Iran's tunnels—whatever their exact number and contents—as a serious test of military abilities. Most say there is no easy way to wipe out a nuclear program that has been well hidden, widely dispersed and deeply buried."[39]

In addition to these developments, 16 U.S. intelligence agencies are about to release a classified national intelligence estimate that will reverse the findings of the 2007 National Intelligence Estimate (NIE) pertaining to Iran's nuclear program. The new argument of these agencies will be that Iran has decided to move forward with weaponization of its nuclear program.[40] This new estimate

> also is expected to update testimony by Director of National Intelligence Dennis C. Blair, who told Congress in March that Iran "has not decided to press forward" with work to put a nuclear warhead on a ballistic missile.
>
> Since his testimony, however, Iran was forced to disclose a new parallel uranium enrichment facility near Qom after U.S. and allied intelligence agencies discovered the previously undisclosed site at a military base.
>
> In addition, an internal document from the International Atomic Energy Agency made public last fall concluded that Iran at least had the know-how needed for weaponization, according to a report by the Associated Press.[41]

SANCTIONS

Since 2006, the United Nations has imposed three sets of sanctions against Iran.[42] As a result of multilateral sanctions targeting the IRGC and Iranian companies, foreign direct investments (FDI) have severely declined in the country.

This has rendered an unstable business environment in the Islamic Republic of Iran.[43] In June 2007, the U.S. Congress passed a bill imposing penalties on any international oil and gas firms doing business with Iran. Also, since 2006, "the U.S. administration has also exerted increasing pressure on international banks to curtail their operations in Iran. Iran's National Bank has declared that Chinese and Russian financial institutions are able to

substitute for the loss of business, but it is evident that the absence of Western banks will have a significant effect on Iran's trade balance and monetary situation."[44]

The May 2008 IAEA report prompted the European Union to impose sanctions on a number of Iranian financial institutions.[45] These sanctions have started to

> seriously affect the Iranian economy, with many factories having trouble sourcing basic materials. Unilateral EU and U.S. sanctions and restrictions have severely affected Iranian financial institutions in securing foreign investments and providing letters of credit for imports. The U.S. Treasury has imposed a strict framework on Iran and continues to deter European banks from initiating joint ventures with Iranian businesses and banks.[46]

In April 2009, the U.S. Treasury targeted six Iranian firms with unilateral sanctions. These six firms allegedly serve as subcontractors of the Iranian Defense Ministry, "and illegally procure military nuclear technology."[47]

As the Obama administration continues to press for tougher sanction resolutions, some United Nations Security Council members pose major obstacles. In particular, Russia and China, both UNSC members, are heavily involved in Iran's gas and oil industries. They are not likely to support severe sanctions, especially if they affect their business interests in Iran.

TWELVER SHIISM, AND IRAN'S MYSTICAL POPULIST: MAHMOUD AHMADINEJAD

The first Islamic political institution is believed to have been the Islamic "state" in Medina under the leadership of the Prophet Muhammad from A.D. 622 to 632. Upon his death, the Meccan and Medinan communities were faced with a power vacuum. The first four caliphs, Abu Bakr, 'Umar, 'Uthman, and Ali, were chosen to lead the growing Muslim community, but not without infighting and schisms.[48] For the (Twelver) Shiites, "The Party of Ali," headquartered in Kufa, Iraq, the right of leadership was only within the family of Ali, who, as the cousin and son-in-law of the Prophet Muhammad, embodied the preeminent lineage and leadership qualities of the family of the Prophet. The Twelver Shiites have represented the mainstream in Shiite Islam, from which many offshoot sects have been derived. Sunni Islam has constituted the mainstream majority sect in the Muslim world, and ever since early Islamic history the Sunnis and Shiites have been ideologically at odds with each other.

For the Shiites, legitimate leadership could only come from Ali's descendants, particularly through the line of Ali and Fatima, the daughter of the Prophet. After the reign of the four caliphs, the seat of power in the Islamic world shifted from Mecca to Damascus, under the rule of the Umayyad caliph Mu'awiya. Subsequently, Ali's and Mu'awiya's sons, Husayn and Yazid, respectively, vied for the caliphate in A.D. 680. Unfortunately for the Shiites, Husayn's forces were considerably small, and despite efforts to recruit support in Kufa, he and his forces were isolated in battle at Karbala and killed. However, "[Husayn's] death was to give the strength of remembered martyrdom to the partisans of Ali."[49] To this day Shiites passionately commemorate Ashura, the anniversary of Husayn's martyrdom. The number

12 in "Twelver Shiism" comes from the belief in the 12 imams: beginning with Imam Ali (the fourth caliph) and his descendants down to the 12th imam, Muhammad al-Mahdi, referred to as Imam Mahdi (the "Messiah"). The popular belief is that the Mahdi is currently in a state of hidden occultation and will return to earth with Jesus upon the end-time and Day of Judgment, bringing justice to the world.

Sunni Islam, as represented by the Ottomans and other, smaller empires, held the majority and most of the positions of political power throughout Islamic history. Over time, Shiism spread throughout the Middle East region, but demographically it has remained mostly a minority, except in the Islamic Republic of Iran, where Twelver Shiism became the official national ideology. Iran is about 89 percent Shiite and 10 percent Sunni. Iraq also has a large Shiite population, about 60 percent, with roughly 30 percent Sunnis. Also, Bahrain's Shiites are a slight majority at 53 percent. Lebanon's Shiite population, constituting one of five Islamic sects, has been extremely active in the civil war and in politics. Hezbollah, a Shiite militia supported by Iran, is a product of the Lebanese civil war, battling against numerous factions, including another Shiite militia, Amal. During the war, Hezbollah engaged in bombings and hostage-taking, and posed a formidable challenge for Israel's southern Lebanon security zone. After the civil war, Hezbollah shifted attention solely toward the latter. In May 2000, Israel withdrew its forces from the southern security zone, and Hezbollah took credit for ending Israeli occupation in Lebanon.

Thereafter, Hezbollah's popularity grew exponentially, particularly among Palestinians. In fact, the prominent Palestinian Islamic groups, including Hamas, have regarded Hezbollah's tactics as ideal and most effective, based on the results in Lebanon. Hamas "has already trumpeted what it calls the 'Hezbollah model' for gaining territory: do not negotiate with Israel—expel it."[50] Hezbollah symbolizes the legacy of Iran's revolution, in particular Ayatollah Khomeini's brand of Shiite politics, constituting a vehemently anti-Israel policy. Iran's president Mahmoud Ahmadinejad also carries on this legacy, as expressed in his religious beliefs, policies, and domestic and regional strategies.

Mahmoud Ahmadinejad,[51] who has a doctorate in engineering, is a veteran of the Iran-Iraq War, is a fiercely nationalistic hard-line conservative (opposes the reformists), is not a cleric, is a former mayor of Tehran, and first ran for president in June 2005. Ahmadinejad campaigned on "change, social justice, a fairer distribution of the country's wealth, and greater resources for younger people."[52] His victory in the first elections was mainly due to "fraud, astute political tactics, and the incompetence of his opponents."[53] Ballot rigging has been a staple tactic, as well as an increasing necessity, for the hard-liners. According to Ali Ansari,

> Of the six candidates who contested the election, four ran on an overtly Reformist platform (with varying credibility) and collectively garnered twice as many votes as the two conservative candidates. This was despite the fact that between forty to fifty percent of the electorate chose not to vote.[54]

The Iranian electorate voted for Ahmadinejad "not because they were devotees of Ahmedinejad's ideological world view, but because they distrusted [former president]

Rafsanjani and, crucially, because Ahmedinejad seemed to be promising change and a better economic future."[55] Upon coming to power, he nominated old friends with backgrounds in security and intelligence, from the IRGC or the Tehran municipality, for powerful cabinet positions.[56] He replaced Hasan Rowhani with hard-liner Ali Larijani (currently the Speaker of parliament) as the nuclear negotiator. Formerly a failed presidential candidate, Larijani was not popular, and, like Ahmadinejad, he espouses fierce loyalty to the supreme leader, Ayatollah Khamenei; he opposes the reformists; and he holds unorthodox views of Ayatollah Ruhollah Khomeini as the "new Prophet Muhammad" and "[portrays] his successor Ali Khamene'i as the new Ali of the Age."[57] Ahmadinejad's presidency has been "a heady mix of populism and religious nationalism."[58]

Ahmadinejad relishes the concept of the "clash of civilizations," and he enjoys "taunting the West," dismissing the West's threats of imposed isolation with the premise that "Iran could seek other friends or thrive in splendid isolation."[59] In short, Ahmadinejad "may be tempted to take risks and provoke a confrontation."[60] Under Ahmadinejad's presidency, Iran's nuclear program, and especially the need to enrich uranium, "became an iconic issue that would brook no questions, not even those relating to the cost of the venture. It became an exercise in vulgar nationalism, a hijacking of an ideology in the interests of power."[61]

MISSILE DEFENSE (MD) AND NUCLEAR NONPROLIFERATION

The Obama administration has developed a new missile defense (MD) system for Europe's security, especially to protect it from potential attacks from Iran. In a September 2009 *New York Times* opinion piece, the U.S. secretary of defense, Robert Gates, explains the revised MD plan that President Obama and his national security team and senior military leaders have devised: In phase one, to be completed by 2011, "we will deploy proven, sea-based SM-3 interceptor missiles."[62]

Phase two would be operational by 2015, and it will involve placing upgraded SM-3s in central and southern Europe.[63] These interceptors, along with radars and sensors networks, "would be a far more effective defense should an enemy fire many missiles simultaneously—the kind of attack most likely to occur as Iran continues to build and deploy numerous short- and medium-range weapons."[64]

The MD shift is based in part on the May 2009 NIE, which assessed that Tehran is not likely to develop a long-range missile until sometime between 2015 and 2020.[65] According to Secretary Gates, the newly proposed MD system is "flexible enough to be adjusted if the Iranians develop a capability sooner than the intelligence is saying."[66]

In addition, one of the Obama administration's top policy objectives is nuclear nonproliferation, as illustrated by Secretary of State Hillary Clinton's appointment of Dennis Ross as the special advisor for the Gulf and southwest Asia; he is now leading the team in U.S.-Iranian nuclear talks. Iran is a signatory to the NPT. President Obama and his advisors are keenly aware of the interconnectedness of issues, crises, and security dilemmas in the Middle East region. Given the regional goals that the administration has set for conflict prevention and resolution, economic and trade relations, counterterrorism, and improved

political relations in the region, President Obama, his special envoys, and Secretary Clinton are pursuing a strategy that would combine diplomacy, engagement, multilateralism, sanctions, MD in Europe, the UN, the IAEA, and the P5+1—all in the effort to contain and control Iran's nuclear program. Under the terms of the NPT, Iran has the right to employ nuclear energy for civilian consumption, but its nuclear program would have to be subjected to IAEA inspections to ensure that nuclear capabilities are not directed toward weaponization.

Iran's Supreme National Security Council (SNSC) has the lead on Iran's nuclear program; the SNSC is the primary national defense institution "established with an aim to watch over the Islamic Revolution and safeguard the Islamic Republic of Iran's national interests, as well as its sovereignty and territorial integrity."[67] Hasan Rowhani served as the secretary of the SNSC until Ali Larijani replaced him. Currently, Saeed Jalili serves as the SNSC secretary, and "was cited as having strong ties to both Ayatollah Khamene'i and President Ahmedinejad. Jalili was given the additional role of Representative of the Supreme Leader in the SNSC in July 2008."[68] Iran's top decision maker is the supreme leader, Ayatollah Khamenei, who not only decides critical policy issues, but also controls Iran's foundations and finances, and he is the commander in chief.[69]

As of late October 2009, the IAEA chief Mohamed ElBaradei gave Iran two days to comply with his draft agreement, consisting of the idea of "putting 1,200 kg. of Iran's low-enriched uranium from the stockpile it has been accumulating at its main enrichment plant in Natanz into the custody of the IAEA, the UN's watchdog, by the end of the year."[70] Then, the IAEA would pass it on for additional enrichment to Russia by mid-January 2010, and following this process it would go to France "for fabrication into fuel rods, then eventually back to Iran, starting in December 2010, in time to keep the Tehran reactor going."[71] Iran missed the deadline for this proposed plan.[72]

Should Iran succeed in weaponizing its nuclear capabilities, a nuclear arms race throughout the Middle East seems all but certain. Says Amir Taheri, author of *The Persian Night: Iran under the Khomeini Revolution*:

> Make no mistake: The Middle East may be on the verge of a nuclear arms race triggered by the inability of the West to stop Iran's quest for a bomb. Since Tehran's nuclear ambitions hit the headlines five years ago, 25 countries—10 of them in the greater Middle East—have announced plans to build nuclear power plants for the first time.[73]

The balance of power, security, and stability of the whole Middle East region are at stake and rely on the integrity of the NPT and the Western powers' ability to enforce it. The U.S. Central Command (CENTCOM) recognizes this, as stated in General David Petraeus's statement to the Senate Armed Services Committee:

> Pursuing our longstanding regional goals and improving key relationships within and outside the [area of responsibility] help to limit the negative impact of Iran's policies. A credible US effort on Arab-Israeli issues that provides regional governments and populations a way to achieve a comprehensive settlement of the disputes would undercut the idea

> of militant "resistance," which the Iranian regime and extremists organizations have been free to exploit. Additionally, progress on the Syrian track of the peace process could disrupt Iran's lines of support to Hamas and Hizballah. Moreover, our cooperative efforts with the Arab Gulf states, which include hardening and protecting their critical infrastructure and developing a regional network of air and missile defense systems, can help dissuade aggressive Iranian behavior. In all of these initiatives, our military activities will support our broader diplomatic efforts.[74]

UPDATE AND CONCLUSION

In early November 2009, Iran's position on the uranium enrichment proposal reverted back to insisting that the IAEA take the fuel, but keep it on an Iranian-owned resort island in the Persian Gulf called Kish.[75] This is despite the Obama administration's assurances, conveyed through IAEA chief Mohamed ElBaradei, that Iran will be allowed to send its enriched uranium stockpiles "to any of several nations, including Turkey, for temporary safekeeping."[76] The Obama administration rejected Iran's counterproposal for the island of Kish. President Obama intends to impose even more severe sanctions against Iran.[77] Meanwhile, during the 30th anniversary of the American embassy takeover and hostage crisis in Tehran, Iran's supreme leader, Ayatollah Khamanei, warned Iranians "against Mr. Obama's offers of diplomatic engagement."[78]

On 11 February 2010, President Ahmadinejad addressed a huge rally in Tehran, commemorating the 31st anniversary of the Islamic Revolution. In the lead-up to the anniversary, the Iranian regime announced it is shutting Google's account, plus it mobilized security and plainclothes militia forces to suppress the opposition Green Movement, which planned mass protests against the government. The regime also attempted to disrupt cell phone and other communication technology transmissions. Several individual opposition protestors have been sentenced to death, and during the 11 February rallies the security forces targeted demonstrators with paint balls in order to track them down and arrest them later.[79]

Provocatively, President Ahmadinejad announced at the rally that Iran has achieved 20 percent uranium enrichment capability. This is still far from the 90 percent uranium enrichment needed for a nuclear weapon, but this has caused confusion in the international community about Iran's intentions regarding its nuclear program. The United States responded with tougher targeted sanctions against Iran's IRGC, whose vast shares and profits in various industries help fund the nuclear program. Even further tougher sanctions are anticipated.[80] "President Barack Obama said the U.S. and its allies were moving 'fairly quickly' towards imposing additional fresh sanctions on Iran.

"On Thursday UK Prime Minister Gordon Brown also said Iran would face tougher sanctions if it continued with its uranium enrichment program and crackdown on opposition groups."[81]

Regardless, the United States "is not just hoping that diplomacy will work, it is also laying the groundwork for what will happen if it fails."[82] For the Obama administration, this will

require both incentives as well as threats to Iran—or, as described in the political jargon, "bigger carrots and bigger sticks." In other words, "Iran would get real benefits if it halted its pursuit of nuclear weapons and incur real costs if it did not."[83]

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To Intervene or Not to Intervene in Darfur

RONALD RATCLIFF, BRENT L. BOSTON, AND NIKOLAS K. GVOSDEV[1]

In July 2008, Luis Moreno-Ocampo, the chief prosecutor of the International Criminal Court (ICC), filed a formal indictment against the Sudanese president, Omar Hassan Ahmad al-Bashir, on charges of genocide against various African groups located in the Darfur region of Sudan. It marked, according to one press report, "the first time prosecutors at the world's first permanent, global war crimes court [had] issued charges against a sitting head of state." In submitting the indictment, Moreno-Ocampo requested that the ICC issue an arrest warrant for Bashir "to stop the slow deaths of some 2.5 million people forced from their homes in Darfur and still under attack from government-backed janjaweed militia." In his words, "We are dealing with a genocide. . . . The international community failed in the past, failed to stop Rwanda genocide, failed to stop Balkans' crimes."[2]

Two years later, the tone has changed. "The genocide in Darfur is no longer a trendy, breathless global cause," wrote Michael Gerson, who had served in the George W. Bush administration as a speechwriter and a senior policy advisor to the president.[3] Darfur has been downgraded from a test of the world's mettle to halt genocide to just another tragic regional conflict. General Martin Luther Agwai, the outgoing commander of the joint United Nations–African Union (AU) peacekeeping force in Darfur, announced in August 2009 that while there was still violence in the region, "There is no war as of now in Darfur."[4] Retired Air Force major general J. Scott Gration, the Obama administration's special envoy to Sudan, after visiting the country in June 2009, declared that the Sudanese government is no longer engaging in a "coordinated" campaign of mass murder in Darfur. "What we see is the remnants of genocide. The level of violence that we're seeing right now is primarily between rebel groups, the Sudanese government and . . . some violence between Chad and Sudan."[5]

The fate of the ICC indictment is a case in point. On 9 March 2009, an arrest warrant for Bashir was issued by the ICC. Within months, it was losing traction. On 3 July 2009, the African Union voted not to implement the warrant, permitting Bashir to freely travel throughout the continent without fear of arrest. The AU did this because it felt that the "warrant compromises peace efforts in Darfur."[6] Bashir also traveled to a number of Arab countries—including U.S. allies Egypt and Saudi Arabia—that refused to detain the Sudanese leader. Nor did the United States place a great deal of pressure on other governments to honor the warrant.

This is not what many people had expected from the members of the Obama administration, based on the positions they had taken prior to the election. When in opposition, then-senator Obama was quite critical of Bush administration reluctance to pressure Sudan to halt the killings in Darfur. His future vice president, Senator Joe Biden, thought that the U.S. military might need to become involved in some fashion (whether through use of airpower or actual "boots on the ground").

> "I would use American force now," Biden said at a hearing before the Senate foreign relations committee. "I think it's not only time not to take force off the table. I think it's time to put force on the table and use it." Obama himself wasn't as blunt, but he also talked about force. Just not U.S. force. He hoped for a "large, capable U.N.-led and U.N.-funded force with a robust enforcement mandate to stop the killings."[7]

Ambassador Richard W. Williamson, who served as President George W. Bush's special envoy to Sudan, concluded that "with Barack Obama's election, the United States would keep the heat on Khartoum, or even raise the temperature, to try to get some meaningful progress in Sudan."[8] Yet the direction taken by the Obama administration over the course of 2009 is markedly different than campaign rhetoric suggested. Instead of robust pressure, the new team, in the words of UN ambassador Susan Rice, has put forward a policy that contains both "calibrated incentives" and "significant consequences for parties that backslide or simply stand still" within an overall framework of engagement.[9]

So two U.S. administrations—those of George W. Bush and Barack Obama—have described what has happened in Darfur as genocide and promised forceful responses—but both have ended up adopting policies that have been a good deal milder than what their speeches suggested—in part due to other, conflicting domestic and international policy goals.

BACKGROUND ON SUDAN AND DARFUR

The conflict in Darfur has claimed up to 400,000 lives and turned some 3 million people into refugees; more than 100,000 structures (including homes, schools, and mosques) have been destroyed. It is one of the more destructive conflicts of the early twenty-first century. In order to understand Darfur, it is important to examine Sudan. Darfur, a region roughly the size of France, lies in the western portion of Sudan, the largest country in Africa. Khartoum, the capital, has long been a place of importance at the junction of the Blue and White Nile rivers. Much of the land was converted to Christianity in the sixth century and, especially in the north, to Islam 1,000 years later. Since the days of the pharaohs, violence, war, and conquest have been familiar components of the Sudanese political landscape.

In 1820, the ruler of Egypt, Muhammad Ali, conquered northern Sudan, a region already closely linked to Egypt and populated largely by an Arab Muslim population. His grandson completed the process by taking over southern Sudan, a region populated largely by peoples of black African stock. After the construction of the Suez Canal, Sudan became strategically important to Great Britain, since its coast abutted the critical sea line of communication linking the Mediterranean to British India. The British occupation of Egypt in

1882 was the spark for the famed revolt of the Sudanese religious leader Muhammad ibn Abdalla, known as the Mahdi, whose regime instituted Islamic religious law (sharia) and who sought to create an Islamic state in Sudan and Egypt. After his defeat, Sudan was placed under the fiction of joint Egyptian-British rule, but London set policy. In 1924, Sudan was divided into northern and southern regions; the southern region saw the British encouraging the spread of Christianity and the use of English, helping to create a different sense of identity from the Arabic-speaking, Islamic north.

Modern Sudan came into being in 1956, but the government was composed largely of Arab Muslim northerners. Rebellion in the predominantly Christian and animist south began almost at once. The north-south civil war lasted until 1972, when a peace agreement was reached (the Addis Ababa accords). In 1983, however, the president of Sudan, Gaafar Muhammad an-Nimeiry, in an effort to win the support of Islamist movements in the country, declared sharia to be the law of the entire land. (These efforts failed; Nimeiry was overthrown in a coup in 1985.) Moreover, in violation of the Addis Ababa agreements, he dissolved the autonomous government in South Sudan. These actions restarted the war, which lasted until a tentative cease-fire agreement was reached in 2005. The fighting cost as many as 2 million lives, mostly from famine.

In 2005, the government of Sudan formally ended the north-south conflict when it signed the Comprehensive Peace Agreement (CPA)[10] with the Sudan People's Liberation Movement (SPLM) and its military wing, the Sudan People's Liberation Army. This agreement attempted to establish the authority of the Sudanese government over all of Sudan in conjunction with a special power-sharing arrangement with South Sudan, and to establish equitable terms for the sharing of Sudan's oil wealth. Composed of six protocols, the peace agreement established the terms of the debate about how to accomplish those goals, but some three years after the accord was signed no final agreement had been reached, as all of the parties have accused the others of bad faith.[11] Finally, in 2009 some of the issues were resolved in talks between South Sudanese vice president Riek Machar, representing the SPLM, and Sudanese second vice president Ali Osman Taha. Yet there have been continuing delays in putting forward the institutions needed to handle the 2011 referendum that will decide whether South Sudan remains a part of Sudan as a whole or breaks away to form a separate country. If South Sudan secedes, it will take a large portion of the country's oil fields out of the control of the Khartoum-based government—another flash point for conflict.

Given the contentious relationship between the central government and South Sudan, it is not surprising that Khartoum would take all steps necessary to retain control of the western part of the country, especially the three states that compose the region of Darfur. The sultanate of Darfur ("House of the Fur," the name of the predominant tribe of the region) was only formally incorporated into Sudan in 1916. Not only does the Sudanese government want to forestall separatism in the west; there is now a resource component as well: the possibility that Darfur is sitting on "abundant" reserves of oil.[12]

The crisis in Darfur erupted in 2003 when two rebel groups, the Justice and Equality Movement (JEM) and the Sudanese Liberation Movement/Army (SLM/SLA), rose up in armed conflict against the Sudanese government and attacked government installations in the region. The JEM and SLM/SLA accused the central government of oppressing black/African Muslims in the Darfur region and have drawn many of their recruits from the Fur, Zaghawa, and Masalit tribes. In reaction to the rebellion, the Sudanese government strengthened its own proxy in the conflict by providing monetary and military support to the Janjaweed militia composed of Arab-descended Muslims. (The term *janjaweed* is a colloquialism referring to "a man on a horse with a gun" and, prior to 2003, was often synonymous with "bandit" or "cattle rustler.") The animosities between Arab and black Sudanese in Darfur have been longstanding. The two groups have clashed intermittently since long before the twentieth century; recent tensions center on regional autonomy and water, grazing, and access rights. The blacks are primarily farmers; the Arabs are herdsmen.[13]

Fighting between the Janjaweed and the Darfur rebels has been brutal. Noncombatants were deliberately targeted based on ethnicity and scorched-earth tactics and other economically aimed measures were also used. Both sides were quickly accused of human rights violations including mass killing, looting, and rape.[14] The Janjaweed has been credibly accused of the worst violations. According to senior UN officials reporting in September 2006, the deliberate use of rape as a weapon remains widespread among the Janjaweed. The Janjaweed, which is better equipped and has been provided with a measure of combat support from the Sudanese Air Force, gained a significant advantage in the fighting. While military opposition by the JEM and SLA was being successfully curtailed, the Janjaweed began destroying black villages in an apparent program of ethnic cleansing. The Sudanese government denied any connection with the Janjaweed, but this protest has been met with near-universal rejection, especially given the role of the Sudanese Air Force in extensive bombing operations against villages in the region.

In response to the fighting, hundreds of thousands of refugees fled into neighboring Chad. Here the refugees appeared safe and were easily accessible to nongovernmental organizations (NGOs) and members of the media. However, Janjaweed forces began crossing the border to conduct attacks on the refugee camps in Chad. In turn, the government of Chad, a longtime supporter of the SLM/SLA, has become increasingly vocal about the need to stop violations of its sovereign territory and is a strong proponent of regional or international peace operations being conducted in Darfur. The Darfur crisis therefore not only was a matter internal to Sudan, but had the potential to spark a regional conflict.[15]

By 2004, the international community had taken notice of Darfur. Aid groups that had come to help Sudanese refugees and displaced people were coming under attack by both rebel and government forces. In June 2004, the AU, with Sudanese permission, dispatched peacekeepers to Darfur to monitor the latest cease-fire agreement, which in theory provided for a no-fly zone over Darfur and unimpeded access to the region for aid and relief workers. However, the AU force (designated as the African Union Mission in Sudan, or AMIS) was small, with no more than 7,000 personnel on the ground. Most of the troops

came from Nigeria and Rwanda and the force was constantly challenged by a lack of logistics capability; it had neither the power nor the mandate to act as a peace-enforcement force, particularly in a region as large as Darfur.

As word of the humanitarian crisis spread, Darfur became the subject of considerable domestic interest in the United States. The long struggle in South Sudan had spawned the rise of Sudan-centered special interest groups located in the United States. Many of these groups were faith based, and since Sudan was an issue on which Democratic-leaning African American groups and more pro-Republican evangelical Christians could agree, a good part of the U.S. political spectrum was covered. In August 2004, 35 evangelical Christian leaders sent a group letter to President Bush. They urged him to provide massive humanitarian aid and consider sending U.S. troops to end what they referred to as genocide taking place in Darfur. These groups were also connected to a variety of political leaders, ranging from members of the Congressional Black Caucus to then–Senate majority leader Bill Frist (R-TN). Other interest groups, such as human rights organizations, also became involved. One of the most influential NGOs in the United States was the Save Darfur Coalition, which coordinated the efforts of numerous advocacy groups to force the U.S. government to intercede in Sudan to stop the killing in Darfur. The Darfur movement was a broad-based coalition, bringing together a big tent ranging from Christian evangelicals to liberal human rights groups. One knowledgeable observer attributes the Coalition with single-handedly putting Darfur on the national security agenda.[16] Some involved with the Darfur cause also tried to paint this as the "good war" the United States should be involved in, as opposed to Iraq (a common slogan seen at rallies was "Out of Iraq, Into Darfur")—uniting opposition to Iraq with support for a robust military. Samantha Power, a professor at the Kennedy School of Government at Harvard, says of the Save Darfur movement, "The fact that Darfur is even on the policy map along with Iraq, Afghanistan, Iran, North Korea, global warming, the fact that Darfur merits an 8 A.M. statement by the president, is testament to one thing and one thing alone, and that is this movement."[17] (Power was a senior foreign policy advisor to candidate Barack Obama, and is now senior director for multilateral affairs at the National Security Council.)

The strength of this emerging Darfur lobby was demonstrated in July 2004 when both houses of Congress passed unanimous resolutions declaring the atrocities committed in Darfur to be genocide.[18] The resolutions called upon the UN Secretary-General to call the situation in Sudan "by its rightful name." While it might seem that the debate over the word "genocide" is merely a squabble over terminology, much more is potentially at stake. Some 140 countries in the world have ratified the Convention on the Prevention and Punishment of the Crime of Genocide, which came into force in 1951; the United States was one of the original signatories. Once a genocide is declared to have taken place, both the United Nations and individual states are required to take action to punish the perpetrators, whether state officials or private citizens. If the U.S. government declared that the actions of the Sudanese government in Darfur rose to the level of genocide, it would complicate an already problematic relationship between Washington and Khartoum.

THE UNITED STATES–SUDAN RELATIONSHIP AND DARFUR

The United States has had a contentious relationship with Sudan. When Bashir came to power in 1989, he was backed by the hard-line Islamist leader Hassan al-Turabi, who was Speaker of Parliament. Turabi cultivated close links with groups like Hamas, Hezbollah, and al Qaeda and openly supported a plot to assassinate Egyptian president Hosni Mubarak in 1995. Osama bin Laden enjoyed a "safe haven" in Sudan (from his expulsion from Saudi Arabia in 1994 until his departure for Afghanistan in 1996) and promised to aid the central government's struggle against the South Sudanese. As a result, the United States put Sudan on the State Department's list of state sponsors of terrorism in 1993 and imposed sanctions on Sudan in 1996. In 1998, the Clinton administration struck targets in Sudan (as well as in Afghanistan) using cruise missiles after the bombing of the embassies in Kenya and Tanzania by al Qaeda.

Turabi's influence on Sudan's foreign policy led to the country's diplomatic and economic isolation. After Turabi fell out with Bashir in 1999, Bashir had Turabi imprisoned and the government in Khartoum worked to improve relations with the United States, becoming much more cooperative in assisting in the fight against al Qaeda and working to achieve a settlement that would end the north-south civil war.

Following the 9/11 attacks, the Sudanese government, particularly the chief of the Sudanese Intelligence Service, Major General Salah Abdallah Gosh, became very concerned that Khartoum might be targeted by the United States because of past associations with terrorist organizations. Gosh spearheaded efforts to reach out to Washington. The Sudanese government now permitted the CIA to question al Qaeda suspects living in Sudan. Sudan also detained foreign nationals transiting Sudan to join the insurgency in Iraq, and has shared intelligence with the United States on developments in Somalia. Additionally, Sudan has provided the United States with intelligence dossiers on hundreds of suspected terrorists. The U.S. State Department has acknowledged the increased cooperation between the two countries and credited the improvement in relations with "significant progress in countering terrorist activity." To further cement this relationship, the CIA invited and flew Gosh to Washington for meetings in spring 2005.[19]

Unfortunately, Gosh had also been accused of being one of the chief architects of Sudan's genocidal campaign in Darfur. His relationship with Washington was cited as proof that the United States softened its opposition to Khartoum's policies in Darfur because the Sudanese government was extending support for the U.S.-led war on terror. Gosh's U.S. visit also did not sit well with members of the Congressional Black Caucus, whose members voiced their displeasure personally to Secretary of State Condoleezza Rice and in a letter to the president.

From the perspective of the executive branch, the crisis in Darfur was only one factor in the overall United States–Sudan relationship. Ensuring that the north-south civil war did not restart and preventing Sudan from becoming a safe haven for terrorists were also important objectives in the eyes of the Bush administration. These three goals made it difficult

to forge a single coherent policy: while isolating and pressuring the Khartoum government might work with regard to Darfur, the other two objectives required some degree of engagement with and cooperation from the current Sudanese government. And initially, the main concerns of the Bush administration were the war on terror and the north-south conflict. As John Prendergast and David Sullivan (the cochairs of the Enough Project) wrote:

> From 2003 through the beginning of 2005, international diplomacy was crippled by the decision to concentrate on securing the Comprehensive Peace Agreement, or CPA, between Sudan's ruling National Congress Party and the Sudan People's Liberation Movement at the expense of Darfur. Instead of seeking an all-Sudan solution, the United States allowed Darfur and the CPA processes to be played against each other. The strong rhetoric of the Security Council resolutions was belied by the unwillingness of the United States and its allies to risk confrontation with Khartoum because the CPA seemed within reach.[20]

Congress took the first steps to make Darfur the overriding priority in U.S. relations with Sudan, in part because an increasing number of members were visiting the refugee camps in Sudan and Chad.[21] A bipartisan group of senators (Richard Lugar (R-IN), Lamar Alexander (R-TN), Sam Brownback (R-KS), Chuck Hagel (R-NE), and Patrick Leahy (D-VT))—reflecting the broad reach of the Darfur coalition—introduced the "Comprehensive Peace in Sudan Act" in July 2004. This legislation earmarked $200 million to provide food, shelter, and medical care for victims of the fighting in Darfur. Additionally, it authorized the president to freeze any assets in the United States that belonged to senior Sudanese leaders and to seek a UN Security Council resolution to ban all arms bound for Sudan.[22] It passed Congress in December.

Darfur also emerged as a "cause celeb" for many of Hollywood's most famous stars. Angelina Jolie and George Clooney were among the most vocal celebrities who have spoken out about the humanitarian issues arising from the ethnic conflict in Sudan, addressing both Congress and the United Nations. Daniel Drezner, in addressing the increasing prominence celebrities can play in the policy debate, acknowledges that "star activists raised the media profile, spurring politicians to act sooner than they otherwise might have."[23] In March 2006 several thousand people rallied together in Washington, D.C., to hear calls from legislators and celebrities for U.S. action to stop the violence in Darfur. Among those present who called for U.S. intervention was the actor George Clooney. Senator Obama said, "If we care, the world will care."[24] Future Speaker of the House Nancy Pelosi (D-CA) added, "If we act, then the world will follow."[25]

As domestic pressure grew, the U.S. government explored ways to assist the African Union force already deployed in Darfur. Heavy airlift was provided (first via European Command, then by Africa Command (AFRICOM) after it was stood up in 2008) to supply the peacekeepers. Beginning in May 2005, NATO forces began to provide limited logistical support for the AMIS operation. But the AU was not able to stop the violence in Darfur, even if its presence has widely been recognized as perhaps the most direct contribution any organization has made to promoting peace in the region. AMIS was always short of money, and AU

spokesmen have admitted the organization lacks the means to assume a broader mission. AU forces could do little more than control the ground they stood on. This was enough to provide security for some refugees and displaced persons, but not nearly enough to secure the entire region. While many proposed that the AU increase the size of the force, this did not take into account the difficulties the AU experienced in finding states to contribute more troops to the operation. Yet the United States was not prepared to put its own troops on the ground in the region. With memories of the 1993 events in Somalia still exerting an influence over policy makers—and with U.S. forces already engaged in Iraq and Afghanistan—the Bush administration signaled its preference for "doubling the number of international troops" in Darfur and for a "bigger role for NATO in the peacekeeping effort."[26]

But there were those in the U.S. policy community who felt that the administration was doing too little. Relying on the African Union to stop the fighting—even with logistical support from NATO—was insufficient. Susan Rice, who served in the Clinton administration as the assistant secretary of state for Africa, wanted the deployment of a far more "robust" peacekeeping force, able to stop the Sudanese government from using military force in Darfur. If Khartoum failed to accept this force, she argued in favor of

> the United States, with backing from European partners and hopefully the political support of African governments, bombing Sudanese targets—air fields, air assets, command and control installations—that have been instrumental in the perpetration of the genocide. The purpose of those attacks would be to persuade the Sudanese government that, in fact, the international community is dead serious about this U.N. deployment and that it needs to relent and allow the U.N. in. We could also contemplate other military options if those don't succeed, even those as robust as considering blockading Port Sudan, through which Sudan's oil assets flow.[27]

Over time, sustained domestic pressure had its impact. Initially, the Bush team hoped that diplomacy could induce the government in Khartoum to act, and so the president in 2006 delayed the imposition of sanctions. However, this approach had produced no results, and in private, the president was now advocating taking stronger action to force Bashir to stop the killing in Darfur, and was privately considering taking direct U.S. action without waiting for the United Nations to act.[28] However, he had been convinced by United Nations Secretary-General Ban Ki-moon to delay any unilateral action against Sudan in order to allow the UN more time to find a diplomatic solution to the problems in Darfur. When Bush agreed to wait, he came under intense criticism from several members of the U.S. Congress. Senator Joe Biden (D-DE), the chairman of the Senate Foreign Relations Committee, stated, "People are bleeding to death now. It is genocide, we should act now."[29] Biden renewed his call for U.S. military action against Sudan, an approach that the Bush administration continued to resist given its obligations in Iraq and Afghanistan.[30] Even members of Bush's own party in the House of Representatives sent him a letter urging him to take action against Sudan, stating in part, "The time is at hand to reassert the resolve of the United States that the atrocities taking place in Darfur cannot stand."[31] President Bush's decision to delay imposing sanctions also angered numerous human rights groups, and also

dismayed Christian advocacy groups who were an important source of political support for the president.[32]

So the Bush administration began to shift to taking a more active role in ending the conflict in Darfur. In May 2007, in an effort to bring pressure on the Sudanese government to stop the fighting, the United States imposed U.S. economic sanctions against three Sudanese government officials and government-run oil-industry-related companies. Those sanctions were in addition to previous sanctions directed against the government in Khartoum. In making his announcement, President Bush declared, "For too long the people of Darfur have suffered at the hands of a government that is complicit in the bombing, murder and rape of innocent civilians. My administration has called these actions by their rightful name—genocide. The world has a responsibility to put an end to it."[33] In amplification of the president's remarks, Deputy Secretary of State John Negroponte explained that in the view of the Bush administration, the Sudanese president had failed to live up to his agreements to stop the killing of innocent civilians in Darfur and was complicit along with the warring militias for failing to do so.[34]

THE UNITED NATIONS STRUGGLES . . .

While the U.S. Congress had declared what was happening in Darfur to meet the standard for genocide—a determination accepted by the Bush administration—there was no international consensus on this question. As the conflict in Darfur became more pronounced, the UN Security Council was forced to consider whether genocide was occurring in Darfur. China, the African Union, and the Arab League all made clear that they did not believe genocide was being committed in Sudan. The European Union argued that there was insufficient information to make a conclusive determination.[35] As a result, a UN commission was established. In January 2005, it released a 176-page report that concluded that although crimes against humanitarian law and human rights to the level of war crimes had been committed, the standard for declaring those killings to be genocide had not been met.[36]

However, the UN Security Council did acknowledge that the situation in Darfur was not just a matter internal to Sudan. It declared, in UN Security Council Resolution 1556 (30 July 2004), that the fighting "constitutes a threat to international peace and security and to stability in the region," specifically citing the flow of refugees to Chad and the cross-border incursions of the Janjaweed. This resolution called on the government in Khartoum to disarm the militias, imposed an arms embargo on the region, and insisted that the Sudanese government allow the unfettered access of humanitarian workers to Darfur. The resolution passed by a vote of 13–0, with China and Pakistan abstaining. But the resolution contained no mechanism for enforcement. Resolution 1564 gave Sudan a choice: cooperate with AMIS, or face sanctions on its oil industry. While this resolution also cleared the Council, significantly, China and Russia both abstained (along with Pakistan and Algeria).

This demonstrated that there were clear limits to how far the UN could go—especially when action had to pass the Security Council. Permanent members Russia and China were

prepared to block sanctions on the grounds that diplomatic efforts needed more time to take root. Thus, a U.S.-proposed sanctions measure did not gain Security Council authorization because of Russian and Chinese opposition; China's ambassador to the United Nations Wang Guangya noted, "China believes this is not the right moment since the . . . negotiations are under way, and we expect progress on that."[37]

In March 2005, the Security Council passed Resolution 1590. This established the UN Mission in Sudan (UNMIS) in order to support the north-south cease-fire and to help with the implementation of the CPA. This resolution authorized the deployment of numerous UN personnel to the country and called for AMIS to coordinate its actions in Darfur to establish peace and security with UNMIS. It also urged restarting peace talks between the government in Khartoum and the Darfur rebel groups. Some observers felt that this emphasis on patient diplomacy had paid off when, in May 2006, the Sudanese government signed the Darfur Peace Agreement (DPA) with the SLM/SLA (largely mediated by the African Union). But the SLM/SLA representatives did not speak for all its factions, which has led, in part, to the DPA's uneven implementation among the SLM/SLA. The agreement established conditions for the security of those living in Darfur and set forth provisions for wealth- and power-sharing among the parties. Initially the UNMIS force was designated to implement the DPA. The United States and other countries, however, argued that a larger and stronger force than UNMIS was needed to implement the agreement.

But there was a catch: states like China were willing to support a more robust peacekeeping force only if the government in Khartoum approved; there was little appetite for setting the precedent that a force could be introduced into the sovereign territory of a state without its consent. Resolution 1679, passed in May 2006, was predicated on this assumption. So the Security Council was not going to impose the deployment of any force over Sudan's objections.[38] Meanwhile, the African Union was running out of money to sustain AMIS and as the AU peacekeepers continued to take casualties in Darfur, public opinion in Rwanda and Senegal—two of the main contributors to AMIS—called for withdrawal of their troops.

Because of growing domestic pressure in both the United States and the United Kingdom to "do something" about Darfur—and given both Washington's and London's reluctance to intervene directly with their own forces—President Bush and British prime minister Tony Blair pushed hard for a new United Nations force to relieve the AMIS force and take over the implementation of the DPA. But, as Prendergast and Sullivan concluded:

> Under domestic pressure to take action, the United States and U.K. forced the adoption of U.N. Security Council Resolution 1706 on August 31, 2006, mandating the U.N. Mission in southern Sudan, or UNMIS, to assume AMIS' responsibilities in Darfur "no later than December 31, 2006." The lack of adequate bilateral preparation and the impatience of the resolution's sponsors came at a steep price—China, Russia, and Qatar abstained, again demonstrating the Council's divisions and emboldening Khartoum. Within hours of the vote, the Sudanese government rejected the idea of a U.N. force in Darfur and Resolution 1706 was dead on arrival.[39]

Sudan, of course, had greater leverage than other states to resist international pressure because it is a major oil producer. Oil keeps the Sudanese government afloat. Oil flows out through Port Sudan, and arms flow in.[40] The government in Khartoum buys many of its weapons from Russia, Ukraine, Belarus, and China. A loophole was created in UN Security Council Resolution 1591, which bans countries from supplying weapons for use in Darfur but does not expressly prohibit Sudan from acquiring weapons that are certified for use elsewhere. Sudan has also used its energy resources as diplomatic leverage. The People's Republic of China has been helping extract Sudanese crude oil since 1996. China is the world's second-largest energy consumer (after the United States)[41] and is the largest importer of Sudanese oil, which makes Sudan one of China's top ten sources of foreign oil.[42] Other developing countries also have large stakes in Sudanese energy to feed their growing economies. While China controls 40 percent of the oil development activity in the Sudan, Malaysia and India each have 30 and 25 percent stakes, respectively, in the oil industry. Indian and Malaysian firms often purchased the assets of Western firms that stopped doing business in Sudan under pressure from NGOs and their own stockholders.

A number of countries were also concerned about any precedent set in Sudan that might have negative implications for their own efforts to suppress separatist insurgencies in their own states. This is why India's external affairs minister Pranab Mukherjee reiterated New Delhi's position that the "resolution of conflict in the Darfur region of Sudan" should also promote "the unity and territorial integrity of Sudan." The Russians have also been reluctant to support intervention, because of the possible implications for how they have conducted the counterinsurgency campaign in Chechnya.[43]

Yet even states like China and Russia had to deal with the pressure of global public opinion. The acclaimed Public Broadcasting System program *Frontline* explored the issues surrounding the tragedy of Darfur in a piece entitled "On Our Watch." It was critical not only of China and Russia, but of the United Nations as well. It asserted that even while "[t]he United Nations was hearing from its own monitors that militias backed by Sudan's government were raping and killing civilians by the thousands in the country's western region . . . the best that it could muster were some impotent resolutions."[44] Beijing played a major role in negotiating a compromise between Sudan and the UN in November 2006 that would create a hybrid UN-AU force for Darfur (and where most, but not all, of the peacekeepers would come from African nations). In spring 2007, Chinese officials visited Sudanese refugee camps and urged Khartoum to be flexible in dealing with the UN.[45] With Chinese support, in June 2007, UN negotiators reached an agreement with the Sudanese government to introduce this hybrid force into Darfur. Under pressure Sudan agreed for the first time to accept non-African peacekeepers into the country.[46] In August 2007, United Nations Security Council Resolution 1769 was unanimously approved. It called for the deployment of 26,000 peacekeepers to Darfur (UNAMID), in what UN Secretary-General Ban Ki-moon described as a "historic and unprecedented" mission.[47] The U.S. ambassador to the United Nations, Zalmay Khalilzad, soberly added a warning to the Sudanese president: "If Sudan does not comply with this resolution, the United States will move for the swift adoption of unilateral and multilateral measures."[48]

Why did China become more supportive of UN action in Sudan? In part because the situation has become even more complicated for the Chinese and the Sudanese government with attacks on Chinese-run oil-producing facilities by Sudanese rebels in December 2007.[49] Those rebels have also promised more attacks on Chinese oil-producing facilities in an effort to force Chinese companies out of Sudan.[50] China was thus given economic incentives to work to end the fighting in Darfur—because its energy assets could be threatened. Highlighting the vulnerability of the government in Darfur, in May 2008, the JEM succeeded in striking Omdurman—a town just across the Nile River from the capital, Khartoum.

Moreover, when Chinese president Hu Jintao met with U.S. president George W. Bush on the sidelines of the Asia-Pacific Economic Cooperation summit in Sydney, Australia, in September 2007, Sudan was one of the items on their agenda. China agreed to increase its pressure on Khartoum to end the fighting. In February 2008, Andrew Natsios, Bush's former special envoy to Sudan, was quoted as saying, "China in my view has been very cooperative. . . . The level of coordination and cooperation has been improving each month."[51]

In contrast to the president's diplomacy, the NGO community attempted to use public pressure to force Beijing to further change course on Sudan. In February 2008, the famous movie director Steven Spielberg withdrew from his role as an artistic advisor to the Chinese Olympic committee in charge of opening and closing ceremonies to protest the lack of Chinese involvement in helping to bring an end to the "unspeakable crimes against humanity that continue to be committed in Darfur."[52] Long an outspoken critic of Chinese complicity in the human suffering in Darfur and Sudan, Mia Farrow was among the first to use the Beijing Olympics as an instrument to pressure the Chinese government to use its influence with the Sudanese government to stop the human suffering in Darfur. Following the lead of Eric Reeves, an activist from Smith College in Massachusetts, the activists sought to link directly the Chinese-sponsored Olympics to the humanitarian crisis in Sudan. The campaign labeled the 2008 Olympic Games in Beijing as the "Genocide Olympics" and called for a boycott by potential sponsors. China, understandably, has been anxious to avoid any connection of the 2008 Olympics with genocide or killing in Sudan. In the view of the activists, progress in Darfur only could be achieved by leveraging China's economic relationship with Sudan by linking the games to the "genocide" being committed in Darfur. They believed that making this relationship known to the rest of the world would serve to "shame" China into forcing Sudan to resolve the issues in Darfur.

While the campaign raised the issue of Darfur, it was soon overshadowed by protests over a renewed Chinese crackdown in Tibet. And many companies—and national leaders—were unwilling to put lucrative commercial relations on the line. In terms of meeting its primary goals, the campaign did not succeed. The boycott effort fizzled and the Beijing Olympics were generally a public relations bonanza for China.[53]

And while China and other countries had moved to accept the idea of a greater UN role in Sudan, they still were not prepared to endorse the use of force to pressure the Khartoum government. As a result, the January 2008 deployment of UNAMID into Darfur did not

proceed as well as most had hoped. Sudan has objected to the deployment, arguing that the head of the peacekeeping force was "working on different agendas which violate the directives of the U.N. Security Council resolutions."[54] The head of the UNAMID peacekeeping force countered by accusing the Sudanese of rejecting non-African troops and setting unacceptable conditions on the force, such as disabling its communications capabilities during security operations.[55]

The experience of UNAMID raises another question: is it better to have an ineffective force on the ground than have no presence whatsoever? In August 2009, Rodolphe Adada resigned as the head of UNAMID. He had been criticized for the slow deployment of the force and its generally ineffective performance in Darfur. Some charged that the AU—influenced by the government in Khartoum—had hampered the effectiveness of the mission by accepting the roadblocks laid down by the Sudanese government. The AU charged that Western countries could have done much more in Darfur but did not offer substantial assistance, preferring to let the AU take the lead.[56] It raised the question as to whether the creation of UNAMID was designed to give the appearance of "doing something" but without committing the international community to take up the responsibility of a more forceful intervention in Darfur.

THE BUSH ADMINISTRATION'S "SATISFICING" POLICY

In April 2008, the U.S. government reiterated its policy toward the problems in Darfur and Sudan, stating in part that the United States was "committed to ending the violence in Darfur through an inclusive political settlement, providing humanitarian assistance to vulnerable populations, enabling the rapid deployment of the United Nations–African Union hybrid [peacekeeping] mission in Darfur and promoting democracy in Sudan."[57] The United States has backed up those words as the largest single donor, providing over $4 billion to ease the suffering in Darfur and western Sudan since 2005. In addition, the United States has contributed nearly a quarter of UNAMID's budget and has offered $100 million to train and equip the AU forces assigned to support operations in Darfur.[58] But more robust options were taken off the table: there would be no creation of a no-fly zone to prevent government aircraft from aiding the Janjaweed, no blockade of Port Sudan, and no introduction of U.S. ground forces into the country.

The question about what to do in Darfur opened up divisions within the Bush administration. Some of the strongest voices for U.S. direct intervention in the conflict came from the domestic policy wing of the White House. After leaving the White House, Michael Gerson continued his efforts to push for American involvement, to

> . . . set out on a ladder of escalation that will compel acceptance of the U.N. force and the disarmament of the militias. This approach would eventually involve the threat of force by a coalition of the willing—not invasion and occupation, but a no-fly zone and perhaps a blockade. It would also require a clear message to the regime that menacing the refugees would bring terrible consequences. The more credible this threat of force, the more likely that the regime complies without the use of force.

> Given other commitments, the U.S. military has been reluctant to even plan for these contingencies. But this leads to the strangest of situations: The French may now be more willing to act against genocide in Darfur than is the Pentagon.[59]

In contrast, the Defense Department, already bogged down with prosecuting the wars in Afghanistan and Iraq, was much less enthusiastic. In June 2004, Pentagon spokesman Larry Di Rita noted, "That would be obviously the first best choice for something like that: get other countries that have capability to do that. . . . It's been done before and we believe that's probably the best thing that we as a government can do is encourage [other] countries to be involved."[60]

In early 2007, Senator Hillary Rodham Clinton grilled Defense Secretary Robert Gates and chairman of the Joint Chiefs of Staff General Peter Pace about contingency plans for Darfur. Her proposals, based largely on the ideas put forward by Susan Rice, called for a no-fly zone and a naval blockade of Port Sudan. It led to this exchange in the Senate:

> Clinton: I'd like to ask you if you have been instructed by the president to begin planning or preparing any such measure, and whether or not you would look into that if you have not yet been asked to do so?
>
> Gates: I have not been asked to. I would defer to General Pace in terms of whether the Joint Chiefs have done any contingency planning along those lines. And I'm certainly willing to pursue it.
>
> Clinton: General Pace?
>
> Pace: I have not been asked to do that ma'am.[61]

Military concerns included the possibility of escalation, and involvement in a conflict on the ground characterized by a multiplicity of actors and militias. Was a U.S. force supposed to be a neutral dispenser of humanitarian aid? Was it there to assist Darfuris in gaining political autonomy or even independence? Without a clear mission objective, there was little enthusiasm for becoming entangled in a messy situation like Sudan.

Darfur could also not be easily separated from other policy considerations of the Bush administration. For instance, the Bush administration had serious reservations about the use of the International Criminal Court as a way to hold Sudanese government officials accountable. From the administration's perspective, the ICC was not clearly accountable to the UN Security Council; it claimed jurisdiction over the nationals of countries that had not ratified the treaty; and there were real concerns that the court could be used as a tool against the United States by charging that American actions around the world qualified as "war crimes." Initially, the U.S. preference was for anyone accused of crimes in Darfur to be charged by a specially constituted international tribunal, similar to the tribunal set up at The Hague to deal with those charged with war crimes in the former Yugoslavia. Ironically, the United States joined with China in abstaining from UN Security Council Resolution 1593, which referred the situation in Darfur to the ICC and authorized it to begin investigating those accused of committing war crimes.

However, in April 2008, John Bellinger, the U.S. State Department's chief legal advisor, announced that the Bush administration was stepping back from its previous rejection of the ICC. In the surprising statement that seemed to repudiate the Bush administration's stance on the ICC, he stated that the United States "now accepts the reality" of the ICC as the sole body that had the ability to punish individuals that escaped prosecution by countries that would not or could not bring them to justice. John Bolton, the former U.S. ambassador to the United Nations who formally withheld U.S. acceptance of the ICC, however, rejected Bellinger's statement as "pabulum," stating somewhat derisively that it reflected a State Department that was "too solicitous" of the approval of international institutions.

Perspectives also shifted within the Bush team. Gerson notes that initially he did not support involving the ICC, writing: "I was skeptical of the usefulness of ICC indictments in situations such as Sudan. Indictments are a blunt diplomatic instrument—once imposed, almost impossible to withdraw in exchange for concessions. They leave a thug in a corner—less likely to negotiate and more likely to lash out at humanitarian groups and civilians. A dictator with no options is dangerous." Over time, he changed his position and argued in favor of using the ICC warrant as pressure against the Bashir government.[62]

Contradictory policy goals beset the Bush administration's Darfur policy to the end. Because Bashir was cooperating in some areas of importance to U.S. security, the Bush administration could not sign up to a policy of trying to remove Bashir from power and bring him to trial. This is why a United Nations Security Council resolution to extend a joint UN–African Union peacekeeping force in Darfur "took note" of concerns raised by the African Union and others "regarding the potential developments" that might occur should the ICC attempt to arrest Bashir or otherwise pursue its indictment of the Sudanese president. Russia, among others, made clear that it was concerned with any attempt outside established political processes to seek an end to the crisis in Darfur.[63] But, because of concerns about the message it might send, the United States ended up abstaining from voting for an extension of the UN-AU peacekeeping force, because, in the words of the U.S. deputy ambassador to the UN, "language added to the resolution would send the wrong signal to Sudanese President Bashir and undermine efforts to bring him and others to justice."[64]

As President Bush prepared to leave office, he reiterated his support for a robust international effort in Darfur by authorizing an emergency airlift to bring heavy equipment and other supplies to bolster the UNAMID force. This was done without charge to the United Nations. AFRICOM, however, stressed that its involvement was to support African efforts, rather than signaling a more direct U.S. role. Spokesman Vince Crawley noted that AFRICOM's role was to "help Africans build the long-term security capacity that they are eager to have."[65]

Bush was asked to comment on his own decision not to send U.S. forces into Darfur. He noted: "'I still believe it was the right decision.' But he acknowledged that by relying on an international force, he had put himself 'at the mercy of the decisions of others,' in this case

a United Nations effort that 'seems very bureaucratic to me, particularly with people suffering.'"[66]

THE OBAMA TEAM TAKES OVER

The election of Barack Obama to the presidency raised hopes that the new administration would bring more clarity in its policies toward Sudan. Democrats had been particularly critical of the Bush administration's response to the situation in Darfur. Bill Richardson, former governor of New Mexico and, for a time, a contender for the Democratic Party's 2008 presidential nomination, visited Sudan in January 2007, where he brokered a short-lived cease-fire between the Sudanese president and the leaders of several rebel factions.[67] Obama himself had pledged (in April 2008) to make ending the genocide in Darfur a priority. Susan Rice was appointed UN ambassador with cabinet rank, and Obama's former rival Hillary Clinton, who had endorsed a tougher U.S. response on Darfur when in the Senate, became secretary of state. Expectations were high that the new administration would put the option of U.S. military intervention back on the table.[68] Signaling the potential for a break with the Bush administration, the new team ordered a policy review to examine U.S. options. However, the appointment of retired Air Force major general Jonathan Scott Gration to be special envoy to Sudan (on 18 March 2009) reflected the president's interest in developing a pragmatic approach to the question.

Not surprisingly, the same set of issues that had bedeviled the Bush administration continued to flare up. Gration was in favor of a strategy toward Sudan that emphasized engagement and incentives, which seemed to put him at odds with others in the administration who in the past had advocated a more confrontational approach with the Khartoum government. Gration displayed no great enthusiasm for using the U.S. military as a means to pressure Sudan. Moreover, Gration emphasized the value of Sudan's intelligence cooperation in the war against terrorism, and also stressed that the active participation of Khartoum was needed to ensure stability in both South Sudan and Darfur. Senator Russ Feingold (D-WI), of the Senate Foreign Relations Committee, during hearings in July 2009, expressed skepticism about this approach. He also raised concerns about whether Gration's strategy, described as "constructive engagement," reflected an interagency consensus of the Obama administration.[69]

The policy review was completed in October 2009, and again stressed the three objectives of U.S. policy toward Sudan: ending human rights violations and the fighting in Darfur, cementing the north-south peace accords, and continued cooperation in antiterrorism. It was generally understood to be a consensus document. For instance, the State Department, particularly Clinton's deputy Jim Steinberg, lobbied hard to prevent backtracking on the ICC warrant, and ensured that the document stressed that "accountability for genocide and atrocities is necessary for reconciliation and lasting peace."

However, "As the policy is implemented, one suspects that the built-in tension between stability/counterterrorism objectives and pressure to resolve North-South and human rights issues will become an important fault line."[70]

In addition, Darfur is no longer the main issue preoccupying U.S. policy makers; it is "managing the probable divorce" between the north and south. And here, the advice being offered to Washington is quite clear: ensuring a velvet divorce allowing South Sudan to secede completely cannot and should not be "complicated by dynamics in Darfur."[71]

By early 2010, it was clear that Sudan policy was being shaped more by Gration and his preference for engagement, as opposed to the more confrontational approach advocated by Steinberg and Susan Rice. Gration could point to a possible major breakthrough as a sign of success for his approach; at the end of February 2010, the JEM signed a truce with the Khartoum government, raising hopes that an end to the conflict might be in sight. This agreement builds on a recent warming of relations between Chad and Sudan and also generated a pledge from Qatar of $1 billion for reconstruction efforts.[72]

Responding to a question put to him by a representative of the Enough Project, an NGO lobbying for Darfur, in February 2010, Obama reiterated his policy stance: engagement with the government in Khartoum "to broker a series of agreements that will stabilize the country and then allow the refugees who are in Darfur to move back."[73] John Prendergast, the cofounder of the Enough Project, commented on the balance of forces within the administration as follows: "Gration is the driver of policy now. He has consolidated control and meets with Obama directly, often without Secretary Clinton in the room. 'This is a White House driven policy and the State Department at multiple levels has been deeply frustrated at their lack of input at various levels of the process,' [Prendergast] said."[74]

The NGO community generally sees the Obama administration's announced policy as a betrayal. Jerry Fowler, of the Save Darfur Coalition, complained: "Why is there a disconnect between how passionately and articulately candidate Obama addressed the issue of Darfur and said that the genocide there is a stain on our souls—and what President Obama is doing and saying now with millions of lives at stake?"[75] Supporters argue that President Obama is constrained by on-the-ground realities that political candidates are often free to ignore. With other pressing concerns on his plate, especially the plan to "surge" in Afghanistan, armed intervention into Sudan is not a high priority. Some also point to warnings about consequences for unmet deadlines to suggest that the Obama team, particularly Clinton and Rice, are still considering an eventual use of force to compel Sudan to cease and desist from its campaign in Darfur. Whether that ultimately occurs or not, however, the Obama administration, as of spring 2010, and despite its campaign promises, is pursuing a similar approach to Darfur to its predecessor's.

Notes

All hyperlinks were accurate and active as of 5 March 2010.

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Antipersonnel Landmines: A U.S. Policy-Making Minefield

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INTRODUCTION

On 17 September 1997, President Clinton stated that the United States would not sign the Ottawa Treaty banning antipersonnel landmines (APLs). He then announced a new U.S. policy that represented a multifaceted approach to landmine control. This was a curious moment, considering that the president was personally inclined toward a landmine ban, as well as the fact that the United States had been a global leader on the landmine issue since the 1980s.[2] The president went on to say that the United States would not sign the Ottawa Treaty banning APLs due to our nation's "unique responsibilities for preserving security and defending peace." He further added that "there is a line I simply cannot cross, the safety and security of our men and women in uniform." Highlights of the president's policy included a commitment to renew efforts to negotiate a global ban on landmines through the United Nations (UN) Conference on Disarmament (CD) in Geneva, an approach he originally announced in January 1997. Also, he directed the Department of Defense (DoD) to develop alternative technologies to replace APLs outside Korea by 2003 and within Korea by 2006, and he committed to significantly increase funding for all aspects of U.S. demining programs. In addition, he made permanent a moratorium on the export of APLs by the United States and capped the U.S. inventory of self-destructing landmines at existing levels. Finally, he appointed General David Jones, a former chairman of the Joint Chiefs of Staff, as special advisor to the president and the secretary of defense for issues related to this policy.[3]

President George W. Bush's administration revisited the issue, and decided that the United States would not sign the Ottawa Treaty banning landmines. The Obama administration, while also not taking action to join the landmine ban treaty, has sent observers to the Cartagena Summit (2009), and promised to review U.S. policy on the issue.

BACKGROUND

In modern history, the landmine problem originated with World War II. Both Allied and German forces laid an estimated 17 million APLs in El Alamein (Egypt) alone.[4] During the Cold War, the landmine problem had its roots in the superpower proxy wars of the 1970s, fought in such places as Angola, Afghanistan, Cambodia, Nicaragua, and Vietnam. Since the Cold War many of these locations and others, including Bosnia, Kosovo, and Chechnya, have been embroiled in internal conflict and civil war. Cheap, effective, and easily obtained,

APLs quickly became the weapons of choice in these conflicts, leading to their extensive and largely uncontrolled use, often by nonconventionally trained paramilitary forces. As a result, an estimated 70 to 110 million such mines were scattered in sixty-eight countries around the globe, causing death and serious injury to thousands of innocent civilians each year. Regrettably, in Cambodia one of every 236 civilians is a victim, and in Angola over 70,000 people are amputees—both are the highest proportions in the world. Initial estimates were that 55,000 casualties were occurring yearly due to landmines. U.S. policy needed to respond to these facts.[5]

The U.S. Department of State (DoS) was an early leader among nations advocating control of landmines. In the late 1970s, DoS helped craft the Protocols to the 1949 Geneva Conventions that were eventually signed by the United States in 1982. These Protocols codified customary humanitarian law, more precisely defined "combatants," established rules pertaining to the treatment of noncombatants, and outlawed the use of indiscriminate and excessive force in war.

Ideas and norms regarding the use of landmines, as well as other tools of war, have been evolving over time. American and European views about landmines are tied by their history and culture to customary law, and the Protocols codified them into international law. In some countries customary law does not carry the same weight and some of those same countries did not sign the Protocols.[6] Further compounding matters, international laws such as the Protocols often clash with rules of sovereignty when dealing with conflicts internal to a state. As a result, states with internal conflicts became an open market for nonsignatory countries to sell mines, which the warring factions eagerly purchased and used, often in irresponsible ways.

Since before World War II, the rules of war and international law have considered mine warfare as a *defensive* strategy. Minefields were normally placed between countries or occupied territory, and APLs were invented to inhibit breaching of these barriers. These procedures generally held through the Korean War, after which both North Korea and South Korea used APLs to help establish the Demilitarized Zone (DMZ). To this day, the U.S. mutual defense treaty with South Korea rests in part on a policy of maintaining defensive mine warfare to protect U.S. forces. During the Vietnam War, however, the Viet Cong used mines not as defensive weapons but as psychological weapons. The Viet Cong often built crude "home-made" mines from tin cans and scrap metal. During that same time frame, the United States introduced a technological breakthrough—*smart* mines capable of self-deactivation and self-destruction.

WHAT IS A LANDMINE?

DoD defines an antipersonnel landmine as a mine designed to cause casualties to personnel. There are several types of mines. The United States favors the more technologically sophisticated "smart" types of mines. One of these types of mines favored by the United States is remotely delivered mines known by the acronym FASCAM, which stands for "Family of Scatterable Mines." They contain both antiarmor and antipersonnel mine variants.

Developed for both the land and air forces, FASCAM was widely viewed as an important force enabler to the military. Except for the dumb mines retained for use in Korea and for training, the United States currently only uses FASCAM. However, the rest of the world's major arms producers—particularly China and Russia—continue to focus on producing *dumb* mines. Italy, once a major APL producer, ceased production and export in the late 1990s. Though labeled "dumb," these mines are sophisticated weapons noted for their ease of construction, cheap cost, and lack of metal parts to foil detection. These types of mines were used extensively in the wars in the 1980s and 1990s and now constitute the problem.[7]

In addition to the DoS, other members of the U.S government were influential in the formulation of the U.S. landmine policy. Senator Leahy, the Democrat from Vermont, was an early supporter of the antilandmine cause and has influenced the process for years by introducing congressional legislation to limit U.S. production, export, and use of APLs. Without Senator Leahy there might not have been any APL action. Senator Leahy proposed an amendment for a one-year moratorium on APL exports, which President George H. W. Bush signed into law in 1992. The following year, the "Leahy Moratorium" was extended for three years, passing the U.S. Senate unanimously. The landmine moratorium he pushed through Congress in 1993 was due to expire in 1996. When he promised to renew it with even greater restrictions, the Clinton administration launched a formal review of its landmine policy. The outcome was published in February 1996 in the first National Security Strategy, in which the United States laid out its commitment to APL control. The strategy clearly stated that long-lasting "dumb" APLs were the problem, *not* the U.S. "smart" FASCAM mines. The 1996 U.S. policy was to stop the use of "dumb" APLs except in Korea and for training, to destroy U.S. stockpiles of these mines, to retain "smart" APLs until alternative technologies could be found, and to conduct demining programs. Additionally, the United States would also seek to use the CD process to control other nations' use of dumb landmines. U.S. allies supported this policy.[8]

INTERNATIONAL FORA

The landmine issue was discussed in several different international organizations, some with an arms control orientation, others with a focus on rules of war. President Clinton elected to pursue landmine reform at the CD since it was an established forum with previous success in negotiating international controls on chemical weapons. CD agenda items included discussions about nuclear arms control, the then-existing ABM Treaty, and the weaponization of space.

Yet another concurrent international forum interested in the landmine issue is the Conference on Conventional Weapons (CCW). The more formal name of the CCW is the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects. This is a forum in Geneva for negotiating rules of war. The Protocols to the CCW currently represent the strictest international agreement on APLs, which the United States signed in 1982. Agreements reached at the CCW dictate what you can and cannot do when engaged in

armed conflict, whereas agreements reached at the CD dictate the types and amounts of weapons participants can produce, manufacture, stockpile, and distribute.

The Review Conference for the CCW resulted in an amendment to the Protocols extending their application to internal conflicts as well as international ones, and made significant progress negotiating controls over other unexploded ordnance, such as cluster bomblets, collectively referred to as explosive remnants of war, or ERW. Work at the CCW is one aspect of APL policy that seldom received attention.

The UN and several nongovernmental organizations (NGOs) became very involved in efforts to limit the production, export, and use of APLs and to minimize their impact on noncombatants. In September 1994, the UN General Assembly adopted a Clinton-proposed resolution striving for complete landmine elimination. Later, the UN voted in December 1996 for another U.S. initiative to negotiate a ban on all APLs as soon as possible. The U.S. State Department welcomed the NGO community involvement as well as the support of politicians and popular personalities. Arms control was a major priority in the 1980s due to Cold War tensions, and the DoS tool of choice for these negotiations was the CCW. At the 1980 CCW, the International Committee of the Red Cross pushed hard for a landmine ban. At this conference the delegates did negotiate Protocols to the Geneva Convention that included limitations on APLs, but the Protocols did not go far enough for many concerned parties. They did not call for an outright ban, did not cover internal wars, and lacked an important element of any arms control mechanism—strong verification and enforcement standards. The U.S. Senate did not ratify these Protocols until 1995. At the First Review Conference of the CCW in 1996, U.S. delegates helped amend the Protocols to address some of the landmine control, verification, and enforcement issues. Not all of the parties to the CCW ratified the amended Protocols; even the U.S. Senate did not do so until 1999.[9] Delays in ratification hindered U.S. credibility when trying to influence other states during these types of negotiations.

BETTER, FASTER, THAN CD, CCW?

In January 1996, the United States and 51 countries signed protocols amending the CCW to strengthen rules governing APL use, but the Protocols did not call for an outright ban. Many delegates were disappointed at the failure to achieve consensus on an outright ban of APLs. Canada's foreign minister Mr. Lloyd Axworthy made an innovative proposal. He decided to radically change the process of negotiating a landmine treaty and announced Canada's sponsorship of a new and different kind of conference in Ottawa in October of that same year, initiating the "Ottawa Process." At the end of the October 1996 Ottawa conference, Mr. Axworthy challenged the world's countries to come back by the end of 1997 with their respective governments' approval for a treaty to ban landmines.

The Ottawa Process surprised many governments, not only because of the speed with which it operated, but also because Canada chose neither to follow the lead of its superpower neighbor to the south nor rely upon an existing diplomatic forum. Instead, Canada formed its own process and rapidly changed the face of international diplomacy. By

December 1997 there were 122 countries that had signed the actual treaty.[10] With only forty countries needed to ratify the treaty, it went into effect on 1 March 1999, and since then the majority of the world's countries have also ratified it.

Mr. Axworthy stated at the DMZ in Korea that the treaty might save 40,000 casualties worldwide per year and that South Korea should eventually renounce APLs. Canada's foreign minister was praised by the UN and other countries for leading the Ottawa Process and for influencing the U.S. policy of 17 September 1997.

The United States made repeated attempts to add APL reform to the CD agenda, but these efforts were blocked by states that advocated using the new negotiating forum, the Ottawa Process, because they felt the issue properly belonged to that process.[11] One reason that the United States favored the CD forum was that all the major landmine-producing states were participants of the CD process and were not participants of the Ottawa Process. In spite of reservations about Ottawa as the ideal forum for landmine control discussions, the United States nonetheless attended Ottawa Treaty meetings as an observer.

DO NGOS MATTER?

Original U.S. landmine policy efforts were supported by several NGOs, and in particular the International Committee of the Red Cross, during the Cold War period. Later, however, the situation changed, and new forces emerged to influence the U.S. APL policy.

In the 1980s, several members of the Vietnam Veterans of America Foundation (VVAF) were performing humanitarian works in Cambodia, distributing prosthetics for landmine victims. Bob Mueller, the VVAF leader, got the idea to seek a worldwide landmine ban to prevent a future need for prosthetics for landmine victims. Five NGOs banded together and shaped the idea of an international campaign to ban landmine use. This grouping of NGOs formed themselves into an umbrella organization known, not surprisingly, as the International Campaign to Ban Landmines (ICBL). The VVAF hired an outspoken activist, Jody Williams, to serve as ICBL coordinator.[12] Ms. Williams championed the ICBL cause and led it from its infancy to "super-NGO" status. She eventually brought together over 1,000 groups and organizations from ninety countries to create a force to pressure governments into changing their landmine policies. She called this concept for world change the use of "civil society."[13] For their efforts, she and the VVAF received the Nobel Peace Prize, an event that generated a great deal of favorable publicity for the cause and undoubtedly enhanced the ICBL's credibility.

Ms. Williams opined that governments would come to see that they do not need landmines to secure their borders and that their civil populations would help to bring about this change. She also spoke of how the NGOs gained credibility with the public and with international organizations and states because they were initially the only ones with the data on the destruction APLs were causing. Ms. Williams added that NGOs were adept at using information to raise domestic awareness of the problem in countries all over the world. She ended by saying that her concept of civil society works to form new partnerships with governments, and that these open partnerships were not the old diplomacy of the nation-states.[14]

The Nobel Prize probably hurt the VVAF as much as it helped. It received tremendous recognition, and thus it helped the ICBL garner support for the treaty. With some help from the Ottawa Process, the VVAF had a significant impact on the international arms industry, reducing production and use of APLs in several countries and, in some cases, eliminating them altogether. Determining who would speak for the ICBL became contentious and difficult for some organization members. After the Nobel Prize was awarded, Ms. Williams left the organization. The VVAF no longer housed the ICBL, which moved to Paris and, with its Peace Prize funding, established itself as an international legal organization to continue its work. For others in the campaign, the movement just lost its glamour and they went on to new issues.

Canada certainly helped the VVAF, but its main disappointment was with the United States.[15] Retired generals Schwarzkopf and Galvin signed up. General Shalikashvili, then chairman of the Joint Chiefs of Staff (CJCS), reportedly had to call and ask the generals to stop supporting the landmine ban, as those views were counter to the Clinton administration's.[16]

The International Red Cross was very involved in the process of establishing the landmine Protocols, and was also a supporter of the Ottawa Process. For its part, the ICBL served a worthy cause in promoting the Ottawa Process, but one could argue that the diplomatic efforts of the DoS were ultimately more important. The major producers of dumb APLs never joined the process, so although it may be popular and get favorable media attention, the treaty is less likely to have the same long-term effects as efforts to negotiate APL reform at the CD and the CCW. Although NGOs such as the VVAF and ICBL did not generate the treaty, they were certainly instrumental in promoting it and pressuring countries to join.

The result was the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, more commonly called the Ottawa Treaty or the Landmine Ban Treaty.[17] For his active support and leadership in this process, the VVAF recognized Canada's Mr. Axworthy with the Senator Patrick J. Leahy Humanitarian Award in December 2000.[18]

DOD, DOS POLICY INFLUENCE?

Recognizing the interrelatedness between the diplomatic and military aspects of the mine issue, Secretary of State Albright joined with Secretary of Defense Cohen to further clarify the president's initiative by introducing a program known as *Demining 2010*, intended to eliminate by 2010 the threat to civilians posed by landmines already on the ground. The president appointed Assistant Secretary of State Karl F. Inderfurth to serve as the special representative of the president and of the secretary of state for global humanitarian demining. The major focus of this policy is on the demining component.

DoD was presented with a politically charged problem, and one that some said could influence success or failure in war. Within DoD, there were many factions with strong emotions regarding the policy. The members of the Joint Staff did not want to run afoul of their civilian leaders at the Office of the Secretary of Defense (OSD), so they would not touch it.

They wanted the Army to lead the APL initiative. OSD wanted to see the APL ban go into effect early in Clinton's first term and were not happy with the Army's go-slow approach.[19] Further exacerbating the issue, the Army zeroed the funding in the 2003–2007 spending plan that targeted the development of dumb APL alternatives, leading some to conclude that the United States would abandon its efforts to develop alternatives for FASCAM mixed-mine systems.[20]

DoD felt itself under attack from all sides on this issue. APL policy appears insignificant. However, it has direct connections to debates about international law, traditional diplomacy versus new processes of arms control, rules of war and sovereignty, and what role other states, NGOs, and the public should play in driving U.S. security policy.

Some DoD organizations defined the landmine issue in their own terms in order to promote their own policies and programs. Within DoD, the Army and Air Force both have a stake in the landmine issue, with their FASCAM systems. When former CJCS General Shelton first came on board, Air Force general Ralston, the vice chairman of the Joint Chiefs of Staff, was a key player while Shelton got oriented to his new duties. Ralston personally favored the ban. Some Pentagon insiders said Ralston's support was politically motivated because this was happening as he was being nominated to be the next chairman. Others accused him of more service-parochial views by supporting the ban on APLs in order to gain more technology funding for the Air Force to pursue alternative technologies. And finally, some implied it was just the traditional Army–Air Force rivalry. This played itself out in discussions surrounding the defense of South Korea. The Air Force strategy for the "Halt Phase" had them doing the major destruction of any North Korean attack, while Army force-planners saw their ground forces at the DMZ doing the bulk of the killing.[21] Money and influence were at stake while the policy was established.

The Joint Chiefs were considering supporting the ban until General Luck, the commander of forces in Korea, said he required landmines. Landmines were not previously explicitly highlighted in Korea war plans. Walt Slocumbe, then undersecretary of defense for policy, found that out and hastily had them put into the war plans so that technology funding would not be hurt.

The DoS traditionally conducts state-to-state diplomacy, not popular NGO-oriented campaigns. Many IGOs and NGOs the United States deals with recognize and appreciate the impact of U.S. contributions in demining. U.S. spending levels increased from $7 million in 1997 to almost $40 million in 2000 and 2001, for a total of almost $142 million.[22] Worldwide demining and mine awareness education efforts are already bearing fruit. Initial estimates were that as many as 55,000 landmine casualties were occurring yearly. Later estimates suggested a much lower, but nonetheless significant, average of about 26,000 a year through the late 1990s. For the year 2000, however, the estimated number of casualties was less than 10,000 total for both landmines and ERW. This significant reduction is believed to be the combined result of fewer mines on the ground and better awareness among citizens of affected countries. Also, early estimates on the number of mines scattered around the globe ranged from 70 to 110 million. These estimates have since been reduced, in part due

to more accurate surveys, but also due to superhuman efforts being made to remove and destroy deployed mines. This data, as well as a lot of other useful landmine-related information, is regularly made available to many audiences through a series of landmine publications called *Hidden Killers*.[23]

To help publicize the dangers associated with landmines, comic books were created for use in Bosnia, which then–First Lady Hillary Clinton introduced in 1996. A Spanish version for use in Central America was unveiled in 1998 at the UN by Kofi Annan and USSOUTHCOM commander General Wilhelm. DoS coordinated with *DC Comics*, a division of Warner Brothers Entertainment, to create and publish the comic books for the United Nations Children's Fund (UNICEF).[24] The comic books were part of efforts to educate the public about the dangers of landmines and to match government and private partnerships to bring support to APL policy. The project was successful.

The U.S. position was that it needed to keep smart mines—especially mixed-mine FASCAM systems—in order to protect U.S. troops. Those countries attending the Ottawa Conference did not agree with the U.S. position. Treaty advocates wanted to completely ban the use, production, stockpiling, and transfer of all APLs. The United States bargained aggressively in the Ottawa Process but to no avail, so the United States did not sign the treaty. The treaty advocates had a driving sense of urgency. However, many did not fully realize that government policy takes time to develop, as do the alternative technologies needed to replace smart APLs. Deliberate efforts through the CD were viewed as ultimately more meaningful. Several countries involved in the proliferation of dumb APLs did not attend Ottawa meetings but did attend the CD in Geneva.[25]

President Clinton knew he would have to publicly address his decision not to sign the Ottawa Treaty and was, therefore, pressured to pull the various aspects of U.S. landmine policy and practice together into a coherent and defensible alternative to the treaty. He received much input in reaching his decision, but the option that he chose was one that maintained U.S. leadership on this issue, protected our forces, and acknowledged values held by the American public. The key new elements of his 17 September 1997 policy were the commitment to develop alternatives to APL use outside of Korea by 2003 and within Korea by 2006, and the appointment of General Jones, former CJCS and an APL ban supporter, as the president's landmine advisor. He also directed a significant increase in funding for demining operations, to include research and development, expanded training, and increased assistance for mine victims. And the last step was to renew efforts to negotiate a global APL ban at the CD.

OTHER POLICY INFLUENCES

The Clinton administration used its interagency working groups to develop and articulate a U.S. landmine policy, but Senator Leahy was also a forceful policy catalyst. He talked President Clinton into the policy, and Leahy's office actually wrote the landmine speech the president gave to the UN in 1994.[26]

Although the state that Senator Leahy represents—Vermont—is fairly small, it is also traditionally independent, and he has managed to be an effective champion of landmine reform for years. He is the recognized leader in Congress on this issue. President Clinton personally commended him for his dedication and moral leadership of the country on this issue, and in 1998 the VVAF even established an annual humanitarian service award named in his honor. In May 1998, National Security Advisor Sandy Berger wrote a letter to Senator Leahy on behalf of President Clinton to advise him that if suitable technological alternatives to existing landmines were found, the United States would sign the Ottawa Treaty by 2006.[27] Previous U.S. leadership in humanitarian demining deflected a lot of the criticism when the United States later did not sign the Ottawa Treaty. Some U.S. NGO friends have even said that Ottawa means nothing and that the United States should continue to focus on demining.

In the same month that Berger wrote Leahy, President Clinton directed DoD in May 1998 to find alternatives for its mixed-mine systems as well as all its APLs. This commitment was well received by the senator, as well as by NGOs and many states party to the Ottawa Treaty, although some considered this less than statesmanlike, since President Clinton would not be in office to honor the commitment. According to some, suitable alternatives already exist. The VVAF's military advisor, retired Army lieutenant general Robert Gard, Jr., wrote a monograph that discusses seven viable alternatives to mixed antitank and antipersonnel mine systems that the DoD already has access to.[28]

Senator Leahy differed more with DoD's policy than with DoS's, and most of his actions seemed to focus on changing DoD behavior. In pushing his Landmine Moratorium Act in 1993 he really caused a DoD policy crisis.[29] Interestingly, the Leahy amendment to the Defense Authorization Act in FY93 requiring demining operations actually helped the DoS by promoting the type of state-to-state diplomacy it favored. DoS negotiates with *countries* to perform demining missions, and then DoD, along with some NGOs and contractors, executes them. With the continued help of the Congress, DoD, and the NGOs, the DoS can further the foreign policy objectives of America through existing humanitarian demining programs.

MEDIA INFLUENCE?

The Ottawa Process received a great deal of media coverage, but much of it was outside the United States. When the ICBL won the Nobel Peace Prize it received a great deal of press coverage. Some of the most favorable media coverage involved now-deceased Princess Diana. She was a champion of the ban with worldwide popularity and constant access to the media. She memorably appeared in widely televised public service announcements walking along the minefields in Africa and talking with child victims of landmines. Her death in August 1997 sparked an emotional upsurge in the demand for a solution in the "Ottawa community." Some consider her a "martyr" for the cause. Some said Queen Noor of Jordan, a human rights celebrity in her own right, took over Princess Diana's role, and with the subsequent death of her husband, King Hussein, had also become something of a "martyr."[30]

The *Los Angeles Times* discussed the administration's policy review and reservations about the APL phase-out plan. The article included an interesting quote by Colin Powell taken from a CNN interview broadcast earlier in the week. Speaking about U.S. objections to some international treaties, then-secretary Powell stated, "Just because they are multilateral doesn't mean they are good."[31]

The *New York Times* printed an interesting article on India's establishment of minefields along the border with Pakistan. The article highlighted the plight of the many civilians displaced from their farms and homes, and it described a number of mine-related accidents involving civilians, soldiers, cattle, and dogs.[32] While not directly related to U.S. policy, it served to remind the world of the many problems associated with APLs. It is also worth noting that India, like the United States, is one of a few states that have not signed the Ottawa Treaty. Surprisingly, several of the other nonsigning countries include states that do not often share the same side of political issues as the United States, such as China, Cuba, Iran, Libya, North Korea, Somalia, and Syria.

THE GEORGE W. BUSH ADMINISTRATION

Elements of the Clinton landmine policy faced some challenges from within DoD. DoD's position going into the Bush administration policy review favored abandoning the Clinton policy commitments to eliminate the use of both dumb and smart APLs by the 2003 and 2006 deadlines. Additionally, the Army cut back on some funding initiatives for alternative technology research and initiatives. Philosophical policy differences between the Clinton and Bush administrations decreased the likelihood of the new Bush administration's honoring Clinton's commitment to sign the Ottawa Treaty in 2006, as had been given to Senator Leahy.

There were some organizational changes made in the Bush administration involving the offices charged with landmine policy. The Office of Global Humanitarian Demining, established as part of the *Demining 2010* initiative, was renamed the Office of Weapons Removal and Abatement (WRA) and falls under the DoS's Bureau of Political-Military Affairs. On 20 November 2001, the assistant secretary of state for the Bureau of Political-Military Affairs (at the time, Lincoln Bloomfield; currently Assistant Secretary Andrew Shapiro), was given the additional responsibility of serving as the special representative of the president and the secretary of state for mine action.[33]

Secretary Rumsfeld initiated a review that recommended abandoning deadlines to replace all APLs with alternative technologies. This caused anxiety among NGOs like the ICBL and Human Rights Watch, both of which had hoped to convince President Bush to go one step further than Clinton and actually sign the Ottawa Treaty.[34]

On 19 May 2001 six retired Army lieutenant generals, including two who had commanded at the division level or higher in Korea, joined ranks with a retired vice admiral and a retired rear admiral in sending a letter to president Bush urging him to sign the Ottawa Treaty.[35] Similarly, a largely partisan group of 124 members of Congress sent the president a letter expressing concerns over DoD's proposed changes to the policy and

encouraged President Bush to honor the current policy and work toward elimination of APLs.[36] Although only two of the letter's signatories were Republicans, the balance of power in Congress then did not permit the president to take matters lightly. The Republican majority in the House was small, with Democrats then in the majority in the Senate, and 2002 was an election year.

The VVAF initiated a lobbying campaign to pressure President Bush, Congress, the State Department, and especially DoD not only to honor President Clinton's commitments but also to sign and ratify the Ottawa Treaty.

In 2001, the Bush administration conducted a review of the U.S. position regarding the landmine ban. In January 2004, the assistant secretary of state for arms control, Stephen Rademaker, announced that "the Bush administration has no intention of joining an anti-landmine treaty."[37] The United States did not employ APLs during the invasion of Iraq in March 2003, and it remains the "largest funder of mine action work, such as destroying landmines and helping landmine victims."[38]

In February 2004, the United States implemented a landmine policy that pledged that, after the year 2010, the United States will no longer use persistent landmines of any type, antipersonnel or antivehicle. Ending the use of persistent landmines is the most significant component of the new policy. The humanitarian danger posed by any landmine is directly proportional to its persistence. Mines that remain active long after their military use is finished pose an unnecessary risk to civilians, and the longer they linger, the greater the risk. Although persistent landmines fulfill a unique military requirement on the battlefield, self-destructing landmines provide the valuable capability of allowing our own forces greater freedom to maneuver. Also, unlike persistent mines, self-destructing landmines defeat enemy attempts to recover these mines to use against us, or to recover mine explosives and fuses to employ in improvised explosive devices.

Additionally, the policy commits the United States to developing alternatives to current persistent landmines, incorporating enhanced self-destructing/self-deactivating (SD/SDA) technologies. SD uses a timing device to explode the mine after a period of time. Current U.S. mines self-destruct between four hours and fifteen days, well within the specified limits set by the CCW's Amended Mines Protocol. SDA is a backup process that would occur in the unlikely event that an activated mine failed to self-destruct. All U.S. SD/SDA mines contain batteries that have been designated with a limited life span, and 90 days after emplacement a mine's batteries are completely exhausted and incapable of detonation. The United States is seeking an international agreement that prohibits the sale or export of landmines that do not self-destruct.

Nondetectable mines pose special challenges for humanitarian mine clearance and are essentially invisible to standard metal detectors. While techniques do exist to find so-called minimum metal mines, these methods are difficult and costly. Effective 2005, the United States banned the use of all nondetectable landmines of any type, and every U.S. landmine meets or exceeds the specifications for detectability in the CCW's Amended Mines Protocol.

Lastly, the 2004 U.S. Landmine Policy called for increased funding for Humanitarian Mine Action by 50 percent over the FY03 baseline levels of $70 million annually. Since 1993, the United States has provided in excess of $1 billion to nearly 50 mine-affected countries for humanitarian mine removal, mine-risk education, assistance to mine survivors, mine surveys, research and development on better ways to find and clear mines, and training for non-U.S. mine action managers so that they can run their own nations' programs more effectively.[39]

In 2007, the UN Secretary-General Ban Ki-moon encouraged countries that have not signed international treaties banning the use of landmines to do so "as soon as possible." He made the appeal in a statement commemorating the International Day for Mine Awareness. Although major powers such as China, Russia, and the United States have shunned the treaty, the number of states-parties continues to grow.[40] As of June 2008, the number of countries that have ratified the treaty stood at 156, although two more countries signed but did not ratify it.[41]

THE OBAMA ADMINISTRATION

The Obama administration has not signed the Ottawa Treaty, and so far has not indicated any intentions to do so. As of November 2009, the administration "completed a review and decided not to change the Bush-era policy."[42] Human rights groups and Senator Leahy expressed disappointment. Senator Leahy described it as "a lost opportunity. . . . The United States took some of the earliest and most effective steps to restrict the use of land mines. We should be leading this effort, not sitting on the sidelines."[43] He called the State Department's review of the landmine policy "cursory and halfhearted."[44] Human Rights Watch director Stephen Goose said that the Obama administration never made it known that the U.S. policy was under review.[45]

State Department spokesman Ian Kelly explained that "[w]e would not be able to meet our national defense needs nor our security commitments to our friends and allies if we signed this convention."[46] However, the United States sent an interagency observer delegation to the Cartagena Summit on a Mine-Free World, which took place from 29 November to 4 December 2009. Representatives from the State Department, DoD, United States Agency for International Development (USAID), and the Centers for Disease Control and Prevention attended the conference.[47]

The antilandmine proponents contend that the United States has no valid need for APLs, and, as Stephen Goose emphasized, "[m]ost of the U.S.'s allies—including all but one NATO country—are parties to the treaty and are pledged not to help other countries use the weapons."[48] The Obama administration continues to feel the pressure to change its policy and sign the convention.

In a Human Rights Watch press release (25 November 2009), Stephen Goose was far more critical of the Obama administration: "This decision lacks vision, compassion, and basic common sense, and contradicts the Obama administration's professed emphasis on multilateralism, disarmament, and humanitarian affairs."[49]

In early April 2010, the International Campaign to Ban Landmines issued a press release, calling on the United States to sign the treaty. The press release also highlighted that "[a] major global mobilization is underway to bring the United States on board the Mine Ban Treaty."[50] Zach Hudson, the coordinator of the United States Campaign to Ban Landmines, added: "The U.S. has not used antipersonnel landmines in 19 years and is the world's largest individual donor for mine action. It is already compliant with other core components of the Mine Ban Treaty. There is no real reason for the U.S. not to join."[51]

CONCLUSION

Landmines proliferated throughout WWII and the Cold War. Now we are observing asymmetric, unconventional security issues and concerns affecting U.S. policies that require new defense technologies and weapons. But it is clear that some aspects of the conventional Cold War–era security policies remain intact (e.g., the DMZ in Korea).

The United States is holding on firmly to its prerogative of pursuing its national security policies and interests. In the increasingly interdependent environment, more state and nonstate actors and influences continue to exert pressures on the United States. However, the United States has maintained continuity in its position regarding the Ottawa Treaty, albeit not without controversy. Beginning with President Clinton, who was willing to sign "with his heart," but decided not to take the step, and up to the Bush and Obama administrations, both upholding a no-sign policy, we see bipartisan consensus on the issue. Any change in the existing policy would come as a result of the influential efforts of individuals, organizations, and perhaps other states, as well as feedback information that the U.S. government may consider. As the executive authority, it is also possible that the president could have a change of heart. This is all illustrative of the policy-making process in American politics.

Notes

1. George Teague authored the original case; it was updated by Shawn Burns. Hayat Alvi updated and revised the case for this edition of the casebook. Daniel Miller's addendum has been subsumed into the updated version.
2. President Clinton, 17 September 1997, transcript of remarks given upon announcing landmine policy, White House, Washington, D.C., Office of the Press Secretary, daily press releases, 17 September 1997. Several Presidential Decision Directives cover the actual policy; the most critical one for DoD and arms control is PDD 64.
3. U.S. Department of State, "Fact Sheet: U.S. Government Humanitarian Demining Program," *U.S. Foreign Policy Agenda* (Washington, D.C.: U.S.I.A., July 1998; issued by DoS 20 May 1998), http://usinfo.state.gov/journals/itps/0798/ijpe/pj38lmfx.htm (accessed 3 January 2002).
4. "The Curse of the Sands," Al Jazeera, 18 March 2010, http://english.aljazeera.net/programmes/general/2010/03/201033143946840949.html (accessed 13 April 2010).
5. U.S. Department of State, *Hidden Killers: The Global Landmine Crisis* (Washington, D.C.: September 1998), http://www.state.gov/global/arms/rpt-9809 (accessed 26 October 1998).
6. Kofi Annan, "At Last, a Court to Deter Despots and Defend Victims," *International Herald Tribune,* 28 July 1998, as published in the *Early Bird,* 28 July 1998, page 11. Mr. Annan makes the point through

relating a quote from the famous Roman lawyer and scholar Cicero, who declared that "in the midst of war, law stands mute." Another secretary-general of the UN, Boutros Boutros-Ghali, makes much of the same argument in his September 1994 article in *Foreign Affairs.* An effective treatment of many of the legal aspects is covered in chapter 6 of the book *The Technology of Killing: A Military and Political History of Antipersonnel Weapons,* ISBN 1 85649 357.

7. Mark Hizney, *Background Paper on APL Control Measure* (Alexandria, VA: Defense Special Weapons Agency, report prepared under contract DSWA001-96-G-0061), May 1998, 1.
8. U.S. Department of State, "Fact Sheet."
9. On 24 May 1999 the Senate finally ratified the Amended Protocols. President Clinton took this opportunity to again recognize Senator Leahy and others. White House, Washington, D.C., Office of the Press Secretary. An executive summary and the text of the CCW can be found at http://acq.osd.mil/treaties.
10. Anthony Depalma, "As U.S. Looks On, 122 Nations Agree to Landmine Ban," *New York Times,* 4 December 1997, 1–2.
11. Conference on Disarmament, *Disarmament Diplomacy,* no. 59, July–August 2001, http://www.acronym.org.uk/dd/dd59/59cd.htm (accessed 3 January 2002).
12. International Campaign to Ban Landmines, "Temptative Statutes to Register ICBL in France," http://www.icbl.com (accessed 27 May 1998).
13. Jody Williams, speech presented at St. George's School, Middletown, Rhode Island, 23 October 1998, author's notes.
14. Ibid.
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Part II:

Themes

The 1973 Arab-Israeli War

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PROLOGUE TO WAR

The seeds of the 1973 war were sown with Israel's stunning six-day victory in 1967. The Arab forces suffered a humiliating defeat, which was felt most severely by Egyptian President Gamal Abdel-Nasser. Nasser tendered his resignation immediately after the 1967 defeat, but a demonstration of popular support within Egypt and much of the Arab world caused him to withdraw this resignation.[1]

It was clear in the wake of the 1967 war that the Arabs could not soon regain their territory by directly attacking Israel. Nasser's strategy evolved to one of increasing military pressure along the Suez Canal with the aim of reclaiming the Egyptian land by making continued occupation too costly for Israel. His "War of Attrition" from March 1969 to August 1970 consisted mainly of artillery and commando raids designed to impose this unacceptable cost on Israel.[2]

The fundamental weakness of the "attrition" strategy was Israel's ability to escalate the conflict when costs grew onerous and make the Egyptian costs too great to bear. One example was in January 1970, when Israel began deep air raids against strategic Egyptian targets. Following this escalation, Egypt sought and obtained increased assistance from the Soviet Union in the form of surface-to-air missiles (SAMs) and additional Soviet fighter aircraft (with Soviet pilots to fly them). There was a direct Soviet-Israeli air battle on 30 July 1970, resulting in five Soviet aircraft downed with no Israeli losses. Shortly after, Egypt and Israel agreed to a cease-fire, and the "War of Attrition" ended in August 1970. The war cost Israel over 700 dead and 2,700 wounded, but the Arab losses were three to five times greater.[3]

In September 1970, President Nasser died of a heart attack and was succeeded by Anwar Sadat. Sadat exhibited greater flexibility than Nasser in pursuing diplomatic solutions, but he retained the option of improving the status quo by force. He accepted U.S.-mediated negotiations, but proclaimed 1971 the "year of decision" if diplomacy failed to dislodge the Israelis from the Sinai. When 1971 passed with no Egyptian action, Sadat's proclamation was seen as a mere bluff. Later in July 1972, when Sadat expelled over twenty thousand Soviet advisers, Egypt seemed even less able to impose a military solution. Few realized that the expulsion of the Soviets, by providing more freedom of action for Sadat, was a precursor to war. Despite the expulsion, Sadat was able to obtain agreement for increased Soviet arms deliveries in late 1972—arms that helped make war more feasible.[4]

For Sadat, the status quo of "no war—no peace" was intolerable. Facing a crumbling economy, deprived of Suez Canal revenues, and still shouldering the humiliation of 1967, Sadat felt he had to do something. In October 1972, Sadat called a fateful meeting of Egyptian military leaders. At this meeting, Sadat stated his desires for a limited war with Israel as soon as Soviet weapons deliveries provided sufficient strength. The Minister of War, General Sadeq, argued vehemently against limited war, believing Egypt was ill prepared to challenge the Israelis. Two days later, General Sadeq was replaced by General Ahmed Ismail, who supported Sadat's plan for limited war. Sadat had decided to change the status quo by force.[5]

From the Israeli perspective, "no war—no peace" was a favorable outcome. The 1967 war gave Israel reasonably defensible borders and some strategic depth for the first time in the young state's history. It would be a long time (if ever) before the defeated Arabs could hope to match Israel's prowess in air combat and mobile armored warfare. The apparent cooling of Egyptian-Soviet relations was also a favorable development; Israel would be free to conduct strategic operations without the likelihood of direct Soviet confrontation. Moreover, the pursuit of détente by the superpowers favored continuation of this favorable status quo.[6] The environment seemed to provide Israel with a greater range of choices for a national security strategy.

The national security strategy chosen by Israel was "total deterrence" (threatening massive retaliation for any attack). Operationally the strategy relied on three essential elements, in addition to superior combat forces:

- Prepared defensive strong points along the hostile borders, which would enable Israel's small standing ground force (supported by a qualitatively superior, largely regular air force) to blunt any initial assault
- Rapid mobilization of well-trained reserve ground forces to execute crushing counterattacks (Israel's ground forces more than tripled to over 350,000 upon full mobilization)
- Sufficient strategic warning (minimum twenty-four to forty-eight hours) to both properly deploy regular forces into the border defenses and mobilize the reserves.[7]

In October 1973, all three elements of the Israeli strategy failed to some extent—the most critical failure being lack of strategic warning. The Agranat Commission that investigated the Israeli "intelligence failure" after the war found that the Israeli surprise was due in large measure to their "concept" of a future Arab-Israeli conflict. This "concept" held: 1) Egypt would not attack prior to solving their "air superiority problem" (inability to strike deep into Israel or protect Egypt and her forces from air attack), and 2) Syria would not attack without Egypt.[8] The "concept" was not merely the product of Israeli imagination, it was precisely the *Egyptian* assessment, known through an excellent intelligence source, prior to Sadat's replacement of General Sadeq in late 1972.[9]

The "concept" served Israel well right up to October 1973. In the previous three years there were at least three times the Egyptians were prepared to go to war: December 1971 and 1972, and May 1973. In the May 1973 instance, Israeli decision makers did not heed

the advice of the director of military intelligence that war was not imminent. They responded with a partial mobilization that cost over $11 million.[10] Moreover, an October 1973 mobilization would have political as well as economic costs, with an Israeli election approaching in late October.

By October 1973 the "concept" had been "proven." It was a given that Egypt would not go to war while still inferior in the air. Therefore, although the Israelis believed Syria was preparing for some sort of military action, by the tenets of the "concept," Syria would not attack. Ironically, the "concept's" elements did apply in October 1973. The Arabs had solved the "air superiority problem" with Soviet SAMs and SCUDs. In the 1967 war, the Israel Air Force was decisive in the lightning victory, nearly destroying the Arab air forces in the opening salvo and providing effective air support for the subsequent Israeli armored thrusts. By 1973, the SAM umbrella provided air cover for the ground troops, and the SCUDs could threaten deep strikes. Air was important in the 1973 war, but certainly not the decisive factor Israel believed it to be. The second part of the "concept," Egyptian-Syrian cooperation, also was present in October 1973. Syrian President Hafez Assad consolidated his power in early 1971 and proved more amenable to conventional military action than his predecessor, who had favored guerrilla action. Coordination between Egyptian and Syrian military staffs began in early 1973, and on 6 October, Israel faced a fully coordinated Egyptian-Syrian attack.

NO LACK OF INFORMATION—THE RUN-UP TO WAR

> It is October 3d today and it is four in the afternoon. I believe that they will reveal our intention any moment from now and this is because our movement henceforth cannot leave any doubts in their minds as to our intentions. Even if they know tonight, even if they decide to mobilize all their reserves and even if they think of launching a pre-emptive attack, they have lost the chance to catch us up.[11]
>
> —Anwar el-Sadat, 3 October 1973

Sadat overestimated his enemy's acuity by some sixty hours (the Israelis were not fully convinced war was coming until 0430, 6 October), but the Israeli failure to see war on the horizon was not due to lack of information. Even allowing for clarity of hindsight, the indicators during the run-up to war were striking.

Most accounts of the run-up to war begin with a 13 September air battle over the Mediterranean in which Syrian fighters attacked an Israeli reconnaissance flight, to their peril as it turned out, losing twelve planes with only a single Israeli loss. There is no evidence that this engagement was part of a coordinated plan, but it did provide a convenient explanation for subsequent Arab deployments. Israeli Military Intelligence (AMAN) expected some sort of retaliation for the incident, and in this light, Syrian deployments could be seen as either preparation for a limited retaliatory strike or defense against any Israeli reprisals. Subsequent Egyptian deployments were seen as normal for an announced exercise ("Tahrir 41," scheduled to begin on 1 October), but also might be defensive for fear of being caught up in Israeli-Syrian conflict.[12] The expected Syrian strengthening opposite Golan was observed over the next week, and Israel did take the precaution of adding some forces on the Golan heights.

On 25 September, King Hussein of Jordan requested an urgent meeting with Israeli Prime Minister Golda Meir. He flew his personal helicopter to Israel and delivered the message that the Syrian deployments were actually the precursor to war and that he expected, if war were to come, Egypt would cooperate with Syria.[13] Meir asked for an assessment of this information from the director of AMAN, Eli Zeira, who argued that Hussein was acting on Sadat's behalf in an effort to bluff Israel into concessions on returning the canal. Hussein's warning did result in further increases of Israeli forces on the Golan but did not dissuade Meir from departing on a planned trip to Europe the next day.[14]

On 27 September, Egypt mobilized a large number of reserves, announcing that they would serve until 7 October. This was the twenty-third time they had mobilized reserves in 1973. On 30 September, they mobilized another large group, and to maintain their deception plan, announced demobilization of the 27 September call-up (although only a small number were actually released).[15] Mobilizations, troop movements, and even credible human intelligence (HUMINT) warnings of war (as in the May 1973 Israeli mobilization) had become a common occurrence. The "cry wolf" factor certainly operated on the Israeli decision makers. Meir later said: "No one in this country realizes how many times during the past year we received information from the same source that war would break out on this or that day, without war breaking out. I will not say this was good enough. I do say it was fatal."[16]

While Egypt had orchestrated a well-constructed deception plan, there is still argument whether the next critical element in the path to war was part of it or just plain bad luck for Israel. On 28 September, Palestinian terrorists from a previously unknown organization based in Syria took over a Moscow-to-Vienna train carrying emigrating Soviet Jews. They demanded closure of a transit center for Soviet Jews at Schonau castle (which had processed over sixty thousand émigrés in the previous two years). The Austrian chancellor, himself a Jew, quickly acceded to their demands to save the hostages.[17] All Arab leaders quickly praised Austria for the action.

Many thoughtful analysts of the war doubt that this incident was part of the deception plan, but the effect was dramatic.[18] The Schonau incident, as it came to be called, caused Meir to delay her return to Israel until after she could make a personal (and unsuccessful) plea to the Austrian chancellor to reopen Schonau (she did not return until 3 October). Moreover, Schonau was the lead story on all Israeli newspapers right up to the day before the war, accompanied by public demonstrations, petitions, and meetings, and it provided another possible explanation for the Arabs' threatening preparations (Syria and Egypt could be reacting in fear of an Israeli attack over Schonau).[19] Schonau was also the front-page Middle East story in the *New York Times* from 29 September through 4 October.

U.S. intelligence agencies were not oblivious to the Arab buildup—as early as 24 September the central intelligence agancy (CIA) passed a warning to Israel noting discrepancies in Egyptian preparations from previous exercises. Israeli intelligence was not alarmed. On 30 September and again on 4 October, Henry Kissinger asked for specific assessments of the region, and both the State Department Intelligence and Research Bureau (INR) and the CIA, apparently relying on assessments they had received from Israel, termed the possibilities of

war "dubious" to "remote."[20] Kissinger later told reporters: "We asked our own intelligence, as well as Israeli intelligence, on three separate occasions. . . . There was the unanimous view that hostilities were unlikely to the point of there being no chance of it happening . . . obviously, the people most concerned, with the reputation of the best intelligence service in the area, were also surprised, and they have the principal problem of answering the question which you put to me."[21]

Israeli intelligence did indeed have an excellent international reputation. The Israeli intelligence apparatus consists of four separate organizations. The Mossad operates in foreign nations much as the U.S. CIA; the Shin Beth is concerned with internal security like the FBI; and a small research department in the Foreign Office deals with political intelligence akin to INR. Unlike the United States, only AMAN (military intelligence) had responsibility for national estimates. Additionally, in Meir's government, decisions were often made in a smaller forum known as "Golda's Kitchen Cabinet," composed of Meir, Deputy Premier Yigal Allon, Defense Minister Moshe Dayan, and Minister without Portfolio Israel Galili. For any national security issues, Israeli Defense Forces (IDF) Chief of Staff David Elazar and Director of AMAN Eli Zeira were usually included. Thus, AMAN not only had responsibility for intelligence estimates, but a rather central de facto role in the most crucial policy decisions.[22] The Agranat Commission later recommended that the intelligence structure should be revised to provide more diverse advocacy in national estimates and distance intelligence somewhat from the policy formulation function, but the central position of the director of AMAN prior to the war meant he played a critical role in the Israeli surprise.[23]

Late in the evening of 30 September, AMAN director Zeira received word from Mossad that a reliable HUMINT source warned the Egyptian exercise would end in a real canal crossing (ironically, this was the same day that Egypt passed the "go" code, "BADR" to their Syrian allies). Zeira waited until the next morning before passing the information to his superiors Elazar and Dayan and said that his experts considered the report "baseless."[24] In addition, at an IDF general staff meeting that day, Zeira voiced the opinion: "the Syrians are deterred by the IDF's ability to defeat the army in one day." But the Arab buildup continued relentlessly.

Reports received on 2 October included Syrian movement of bridging equipment, fighter aircraft, and SAM batteries. In the south, Egyptian bridging equipment was also observed advancing, and crossing spots were being prepared in the Egyptian Third Army sector.[25] An article was also published that day by the Cairo-based Middle East News Agency that the Second and Third Armies were on full alert (the article was one of the very few breaches in Arab security and deception plan, another was the premature cancellation of flights and dispersal of Egypt Air commercial aircraft on 5 October).[26] It was only at this late date (2 October) that the precise hour for the attack was agreed between Egypt and Syria, and the next day, the Arabs directly informed the Soviets that war was imminent.

The combination of indicators led Defense Minister Dayan to recommend a "Kitchen Cabinet" meeting on the morning of 3 October, shortly after Meir's return from Europe. At the meeting Zeira's deputy (Zeira was ill) related that the probability of war was still "low"

because, "there has been no change in the Arab's assessment of the balance of forces in Sinai such that they could go to war." At a full Israeli cabinet meeting later that day, Meir did not even discuss the Arab buildup. Rather, the "hot topic" remained the Schonau incident.[27]

Not everyone in AMAN was as wedded to "the concept" as those at the top. On 1 October, a young intelligence officer in IDF Southern Command, LT Siman-Tov, produced a document that argued the buildup opposite the canal was preparation for actual war. The lieutenant revised and strengthened his argument with a follow-up document on 3 October. Both of the reports were suppressed by the senior Southern Command intelligence officer because, as that officer later recounted, "they stood in contradiction to Headquarters' evaluation that an exercise was taking place in Egypt."[28] AMAN director Zeira only learned of Siman-Tov's reports during the Agranat Commission testimony months after the war. Upon learning of the reports and Siman-Tov's subsequent removal from his post at Southern Command, Zeira invited the lieutenant for an office visit and promoted him to captain.[29]

4 October provided some of the most dramatic warning indicators of the run-up to war. A special air reconnaissance mission in the Sinai revealed an unprecedented buildup of Egyptian forces. Fully five divisions and massive numbers of artillery were now positioned on the west bank of the canal.[30] In the late afternoon, it was learned Soviets were preparing to evacuate dependents (but not advisers). Late that evening, AMAN detected Soviet airlift heading for the region, presumably to execute the evacuation.[31] At 0200 the next morning, Mossad's best HUMINT source gave his case officer the code word for imminent war ("radish") and requested an urgent meeting. The chief of Mossad himself elected to fly to Europe to meet with the source personally, and notified Zeira of the development.[32] By the morning of 5 October, AMAN also reported that Soviet naval vessels were departing Arab ports.[33]

In the face of these indicators, IDF Chief of Staff Elazar, with Minister of Defense Dayan's concurrence, increased the alert status of the regular armed forces and instructed logistics centers to prepare for mobilization of reserves. At a subsequent 1100 meeting with Meir, Dayan, Elazar, and Zeira, discussion turned to what was seen as the most ominous of the indicators—the evacuation of Soviet dependents. Zeira outlined three possible explanations for the evacuation: 1) Soviets knew war was coming; 2) Soviets feared an Israeli attack; and 3) there had been a serious rift in Soviet-Arab relations. He admitted that only the first explanation squared with all the indicators, but he did not change his opinion that there was a low probability of war.[34] Zeira did mention that he anticipated additional information to be forthcoming shortly, although he did not mention the Mossad HUMINT source by name. He was explicitly asked if "all sources were open and being used," and he told his superiors that this was the case. It was learned later that at least one highly valued signals intelligence (SIGINT) source was not activated on Zeira's specific orders. It is presumed that he feared compromise of the source, but the fact that he essentially lied to his superiors indicates how strongly he still believed in the low probability of war.[35] At the end of the meeting, Meir decided to convene a full cabinet meeting, but many ministers had already departed for the Yom Kippur holiday.

The "rump cabinet" met around noon to consider the situation. After brief discussion, it was agreed that authority to mobilize reserves would be delegated to Dayan and Elazar, but that steps already taken by Elazar would be sufficient for the present. The final AMAN report prepared before the war was ready shortly after the cabinet dispersed. Thirty-nine paragraphs of alarming indicators were recounted in the report, but the AMAN Egyptian desk officer appended his own final paragraph. The paragraph read:

> Though the actual taking up of emergency positions on the canal appears to contain indicators testifying to an offensive initiative, according to our best evaluation no change has occurred in the Egyptian assessment of the balance of power between their forces and the IDF. Therefore, the probability that the Egyptians intend to resume hostilities is "low."[36]

At about 0400 on 6 October, AMAN director Zeira received a phone call confirming the nature of the information from the Mossad HUMINT source (the information was actually received by the chief of Mossad the previous evening and another Mossad officer allegedly phoned the information to Israel—the twelve-hour delay in getting to the decision makers remains unexplained).[37] Zeira telephoned Elazar with the information that the Arab attack would come at 1800 that very day. Elazar in turn called Dayan, who already had the same information (it is unknown how Dayan got word, but possibilities include the earlier Mossad phone call and the U.S. CIA). By 0600 when Elazar and Dayan arrived at IDF headquarters, SIGINT sources had already reported Syrian officers phoning relatives in Lebanon telling them not to return to Syria anytime soon. There was no doubt at this point that war was imminent.[38]

Elazar and Dayan disagreed on how to respond. Elazar favored a preemptive air strike and full mobilization to be ready for a rapid counterattack. Dayan opposed the preemptive air strike for political reasons and thought a full-scale mobilization was unnecessary since in-place forces should be able to hold their lines, making counterattack unnecessary. At a subsequent 0900 meeting with Meir, the preemptive strike was conclusively ruled out and only a partial mobilization was authorized. Mobilization actually began at 1000, and a full mobilization was authorized later that day.[39] In addition, movement into the prepared defensive strong points in the Sinai was not rapid enough to occupy them all by the actual 1400 start of the war (some believe because the warning specified an 1800 H-hour).[40]

Israel's reactions, even after all doubts concerning the attack had been removed, have evoked a number of competing explanations. It is clearly the case that Israel was mindful of the political necessity to not appear to be the instigator of the conflict. Meir spoke with the U.S. ambassador to Israel the morning of the attack and was told diplomatically that: "If Israel refrained from a preemptive strike, allowing the Arabs to provide irrefutable proof that they were the aggressors, *then* America would feel morally obliged to help. . . . " (this statement was also the "moral lever" that Meir used later to argue for increased military resupply from the U.S.).[41] Some scholars argue that Israel feared even full mobilization might be perceived as Israeli aggression or trigger an Arab attack even where none was actually planned.[42] Others have argued that the Israeli "concept" and mindset continued to affect their thinking even after any doubts about Arab intentions were resolved. These scholars

argue that complacency and overconfidence in their own capabilities versus the Arabs caused less than optimal response by the Israelis.[43] No matter which explanation is closer to the truth, it is clear that Israel paid dearly for both her surprise and limited initial reactions in the ensuing war.

THE WAR

The first forty-eight hours of the Arab attack sent Israel reeling. On the Syrian front, three infantry and two armored divisions stormed into the Golan Heights, defended by a single Israeli armored division. Although Syrian losses were extremely heavy, by the afternoon of 8 October, the Syrians had achieved a major breakthrough and Syrian tanks stood on the hills overlooking the Sea of Galilee and pre-1967 Israel. The situation was so desperate that arriving Israeli tanks were committed to battle in "ad hoc" platoons, formed whenever three tanks could be assembled.

In the south, the Egyptians sent two field armies (five infantry and two armored divisions) across the entire length of the Suez Canal and around or through the Israeli frontline strong points. The crossing must be considered one of the best-orchestrated obstacle crossings in history. The Egyptians achieved major bridgeheads east of the canal (Second Army in the northern half, Third Army in the south). The Egyptians estimated the possibility of up to ten thousand killed in this operation—the cost was a mere two hundred killed.[44] By 7 October, the defending Israeli regular division had lost two-thirds of its 270 tanks, most to infantry antitank missiles.

On 8 October 1973, the first two reserve armored divisions arrived in the Sinai and were committed to a major counterattack of the Egyptian positions. One of the divisions was badly mauled by the entrenched Egyptian infantry. The other spent the day maneuvering due to confusing reports on the progress of the battle. By the end of the day, the Israeli army suffered what noted military historian Trevor Dupuy called: "the worst defeat in their history."[45]

The low point of the war for Israel came on the evening of 8 October. Israeli Minister of Defense Dayan told Prime Minister Golda Meir, "the Third Temple [the state of Israel] is going under."[46] Some speculate that if ever Israel considered seriously using nuclear weapons, it was on the night of 8 October 1973, and at least one author has claimed that a decision to ready the weapons was actually made.[47] It is known that on 9 October Meir was concerned enough to propose the drastic step of traveling personally to Washington to speak face-to-face with President Nixon but discarded the idea upon receiving reassurances of U.S. resupply.[48] Several days later on 12 October, Golda Meir transmitted a personal letter to Nixon. That letter reportedly hinted Israel might soon be forced to use "all available means to ensure national survival" if U.S. military resupply was not immediately forthcoming. This subtle nuclear threat was less credible by 12 October, when the gravest danger to Israel had already passed, but U.S. arms began flowing the next day. Years later, Henry Kissinger indicated to a trusted colleague that an implicit nuclear threat was involved over the arms resupply issue.[49]

The tide began to turn by 9 October. In the south, the Israelis eschewed further counterattacks as the Egyptians elected to reinforce their positions. The Israeli reserves arriving on

the Syrian front counterattacked and, after heavy fighting, restored the prewar lines by the evening of 10 October. A major Israeli counterattack aimed at threatening the Syrian capital of Damascus was prepared for 11 October. The intent was to knock Syria out of the war so Israel could concentrate on the Sinai. The attack pushed the Syrians some ten miles past the prewar lines, but it stalled approximately twenty miles from Damascus. At this point, the Syrian defensive lines held, aided by the arrival of troops from Iraq and Jordan. By 14 October, the northern front stabilized.[50]

The counterattack in the north did not knock Syria out of the war, but it did affect the southern front to Israel's advantage. On 11 October, Syria urgently requested Egyptian action to relieve Israeli pressure in the north. Egypt had achieved success thus far by remaining under their SAM umbrella and fighting a defensive war. Not all Egyptian commanders were convinced that switching to the offense was the best course of action; notably, Minister of War Ismail was opposed. However, the Syrian plea strengthened the position of other key Egyptian leaders who had argued that Egypt should exploit her gains. Thus, on 14 October, the Egyptians launched the equivalent of a two-armored-division thrust along a broad front against the now-prepared and reinforced Israelis. The Egyptians were repulsed with extremely heavy losses. This was the last major Egyptian offensive.

The Israeli offensive in the south began on the afternoon of 15 October as a two-division thrust toward the Suez Canal just north of the Great Bitter Lake. Lead elements of the Israeli force, maneuvering through lightly defended terrain, reached the east bank of the canal late on 15 October and began crossing in the early morning of the 16th. Three days of pitched battle with heavy losses on both sides allowed the Israelis to improve their access to the canal and exploit their bridgehead. By 18 October, an Israeli pontoon bridge was spanning the canal and a two-division force was crossing into "Africa" preparing to attack southward toward Suez to cut off the Egyptian Third Army. By 22 October, elements of the Israeli force were within artillery and tank range of the main Suez-Cairo road, threatening communications with the Third Army.

Initially the Egyptians believed the offensive was an attempt to roll up the right flank of the Second Army. The Egyptians did not appreciate the true purpose of the Israeli thrust until late on 18 October, when satellite photography confirmed the size of the Israeli force west of the canal (the photography was provided by Soviet President Alexei Kosygin, who had traveled secretly to Cairo on 16 October).[51] When the intentions of the Israelis became clear, Sadat became much more receptive to Soviet suggestions to press for a cease-fire. On 20 October, Henry Kissinger flew to Moscow to hammer out the terms of a UN-mediated halt to the fighting. The result was UN Security Council Resolution 338 (UNSCR 338), adopted in the early-morning hours of 22 October. The resolution called for a cease-fire beginning at 1852, 22 October.

Henry Kissinger stopped by Tel Aviv on his way back to Washington at Israel's request to discuss the negotiations (Kissinger had not communicated with the Israelis prior to agreement on the draft UNSCR). The "cease-fire in-place" portion of UNSCR 338 was criticized by Israeli officials, who complained it would not allow them to "finish the job" in the Sinai.

Kissinger responded by asking how long it would take to complete encirclement of the Egyptian army. Upon hearing "two or three days," Kissinger is reported to have responded: "Well, in Vietnam the cease-fire didn't go into effect at the exact time that was agreed on."[52]

Although both Egypt and Israel accepted the terms of UNSCR 338, fighting continued past the designated cease-fire time. Both sides claimed that the other had violated the cease-fire, and both sides were probably correct. With many Egyptian units encircled behind the Israeli line of advance on the west bank of the canal, some continued fighting was inevitable. Israel went beyond consolidating gains and used the continued fighting to complete their encirclement of the Egyptian Third Army. Israeli forces reached the Gulf of Suez by midnight, 23 October.

By 24 October the final positions of the opposing forces were essentially established, but fighting continued on the west bank of the canal. The Soviets, who had guaranteed Sadat the cease-fire would hold and that the Third Army would be saved, responded to the continued fighting by placing up to seven airborne divisions on alert and marshalling airlift to transport them to the Middle East. At 2125, 24 October, President Nixon received an urgent note from Brezhnev suggesting joint U.S.-Soviet military action to enforce the cease-fire. The note threatened unilateral Soviet action if the U.S. was unwilling to participate.[53]

Nixon and Kissinger saw deployment of U.S. troops so soon after Vietnam, possibly to fight alongside Soviets against Israelis, as impossible. Similarly, unilateral Soviet action was unacceptable. Early on 25 October, Nixon cabled Brezhnev voicing his strong opposition to superpower military involvement, especially unilateral Soviet action. Nixon also placed U.S. military forces worldwide on an increased state of alert (DEFCON THREE), and an urgent warning was sent to Israel to cease fighting. That afternoon, fighting along the Suez front subsided to minor skirmishes, and superpower tension was relieved. The war had produced the most serious superpower confrontation since the 1962 Cuban Missile Crisis.[54]

It took until 18 January 1974 to reach a disengagement agreement between Israel and Egypt. The agreement created a UN buffer zone approximately ten miles east of the Suez Canal with limitations on Egyptian and Israeli forces in areas adjacent to the buffer zone. Disengagement negotiations with Syria were more difficult. An agreement was finally reached on 31 May 1974, including a UN buffer zone approximating the prewar border with force limitations in the adjacent areas.

WINNERS, LOSERS, AND LESSONS

Both sides claimed victory. Israel, after being nearly overwhelmed, staged a remarkable comeback, conquering new territory in the north and isolating an entire field army in the south. The Soviets had pressed urgently for a cease-fire because they recognized "the full significance of the deteriorating military situation."[55] Israel suffered over 11,000 total casualties (2,800 killed) and lost over 800 tanks (400 of which were later repaired) and over 100 aircraft. The Arabs combined suffered over 28,000 casualties (8,500 killed), losing over 1,850 tanks and 450 aircraft.[56] While the Arabs lost more men and equipment, the impact on Israel with a much smaller population was arguably more severe.

Despite the losses, Arab claims of victory are not far-fetched. In the north, the Syrians and their allies had fought the Israelis to a standstill. In the south, Israel had isolated the Egyptian Third Army, but it is not clear that the Israelis could have protected their forces on the west bank of the canal from a determined Egyptian assault and still maintained sufficient strength along the rest of the front. In the final settlements, Syria essentially maintained the status quo ante, and Egypt regained the Suez Canal. Unquestionably the best argument for an Arab victory is the changed political situation. The Arabs had accomplished their goal of favorably upsetting the status quo, and the 1973 war was a direct antecedent of the 1979 Camp David Accords. Trevor Dupuy sums up the issue well:

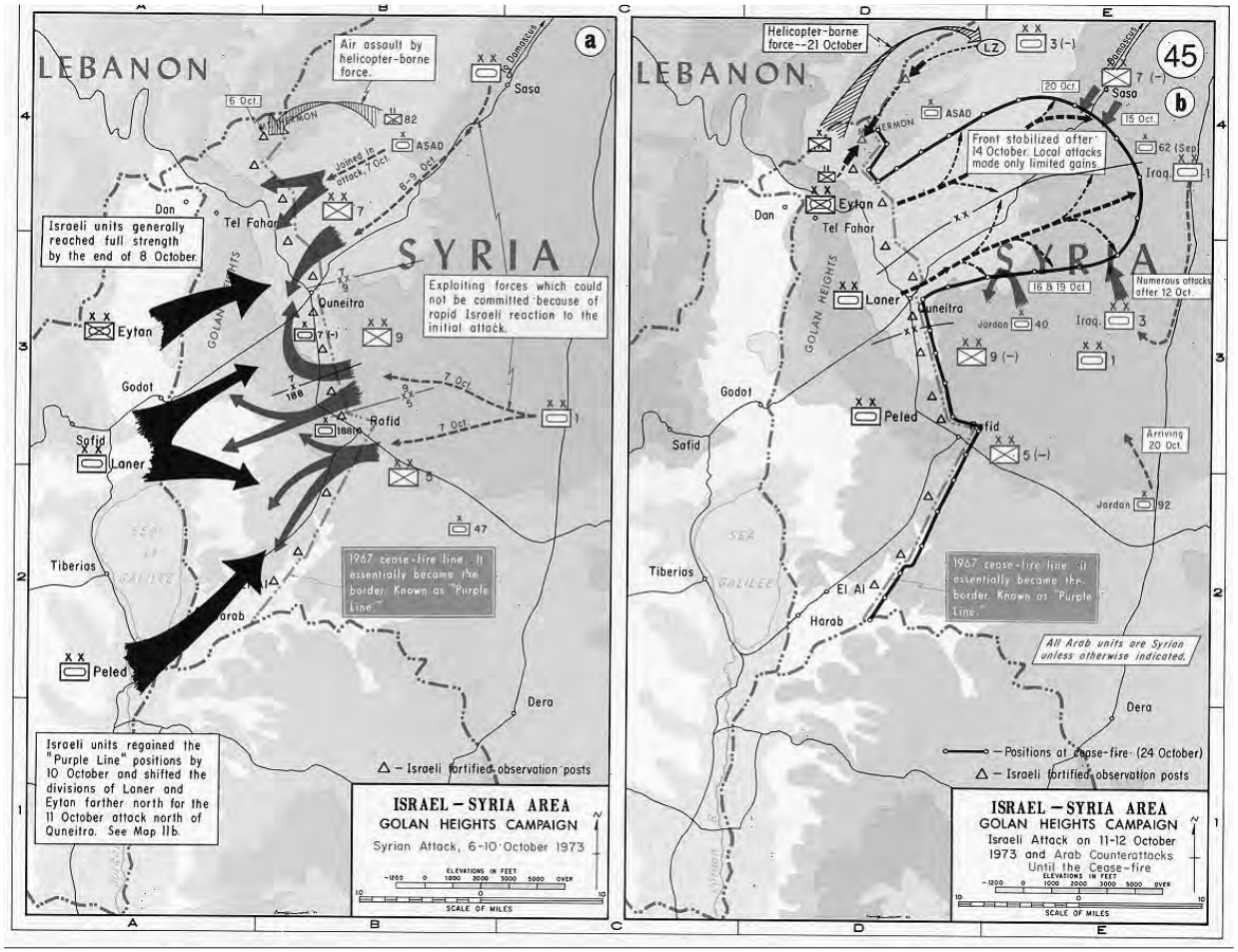
> Thus, if war is the employment of military force in support of political objectives, there can be no doubt that in strategic and political terms the Arab States—and particularly Egypt—won the war, even though the military outcome was a stalemate permitting both sides to claim military victory.[57]

The 1973 war has been extensively studied for both its military and political lessons, but it is equally revealing as a study in human decision making. The disastrous 14 October Egyptian offensive, which was resisted by Minister of War Ismail, is one example. The Syrian call for help, coupled with the euphoria over initial Egyptian successes felt by many in the senior Egyptian staff, prompted this poor decision. Parallels to the revision of objectives in Korea after Inchon are discernible, as is an appreciation for the discipline it must have taken to hold to the original objectives in Desert Storm. The case also graphically points out the human tendency to "fight the last war." Israeli reliance on mobile armored warfare, supported by air, was key to the 1967 victory, but also the precursor to the 8 October defeat. The most striking lesson, however, is the aspect of lack of appreciation for the opponent's point of view.

The Israelis were genuinely surprised in October 1973, mostly because they viewed Egypt's resort to war as an incomprehensible act. By their calculations, there was no chance for Egyptian victory, thus no reason to resort to force. From Sadat's perspective, even a limited military defeat was preferable to continuation of the status quo. The parallels to U.S. evaluations of Saddam Hussein's calculations are evident. The technology of war may change, but the calculations (and miscalculations) of national leaders remain a constant element of international conflict.

Figure 1: Southeastern and Eastern Mediterranean
Source: USMA Military History Atlas, http://www.dean.usma.edu/history/web03/atlases/atlas_toc.htm

Figure 2: Israel-Syria Area: Golan Heights Campaign
Source: USMA Military History Atlas, http://www.dean.usma.edu/history/web03/atlases/atlas_toc.htm



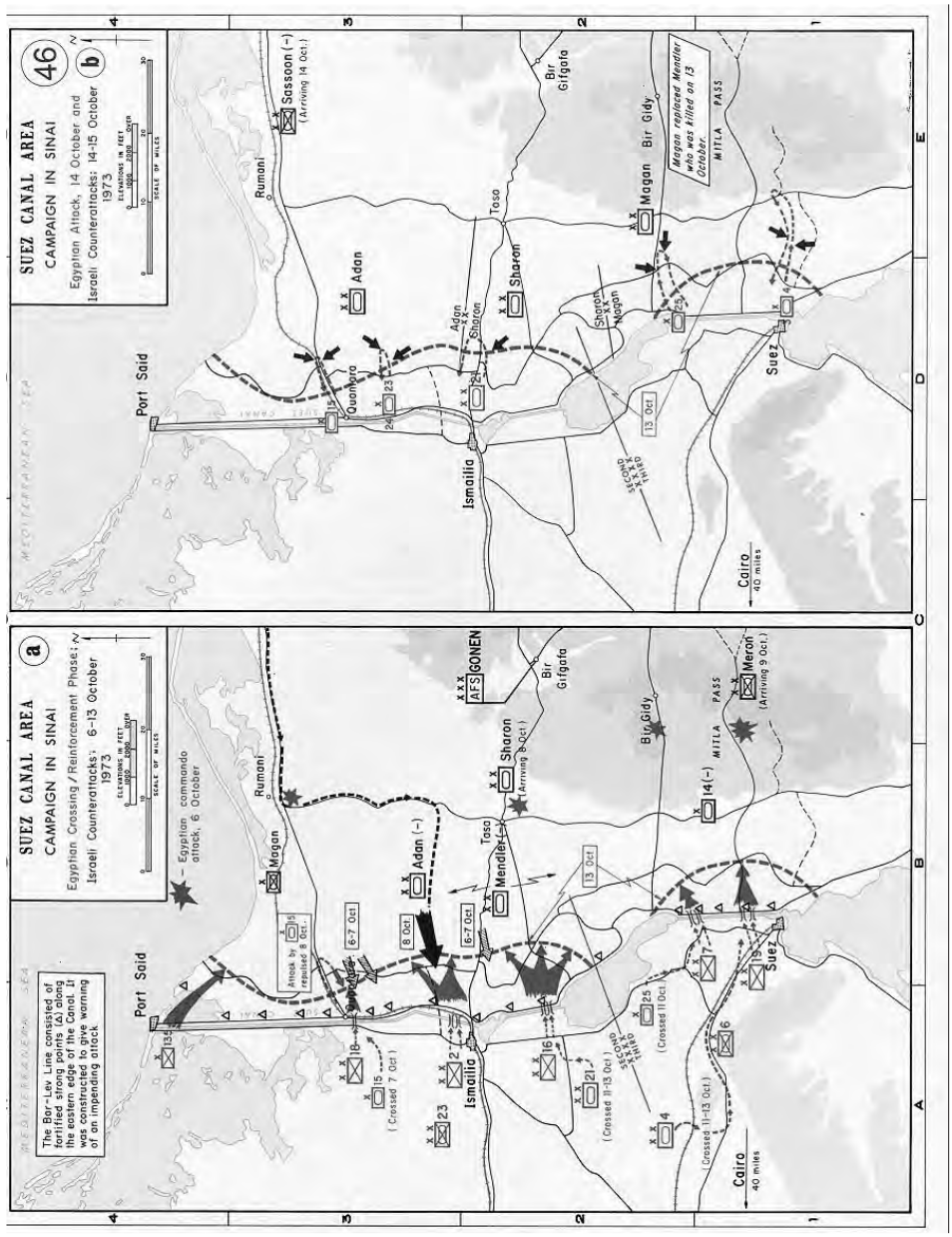
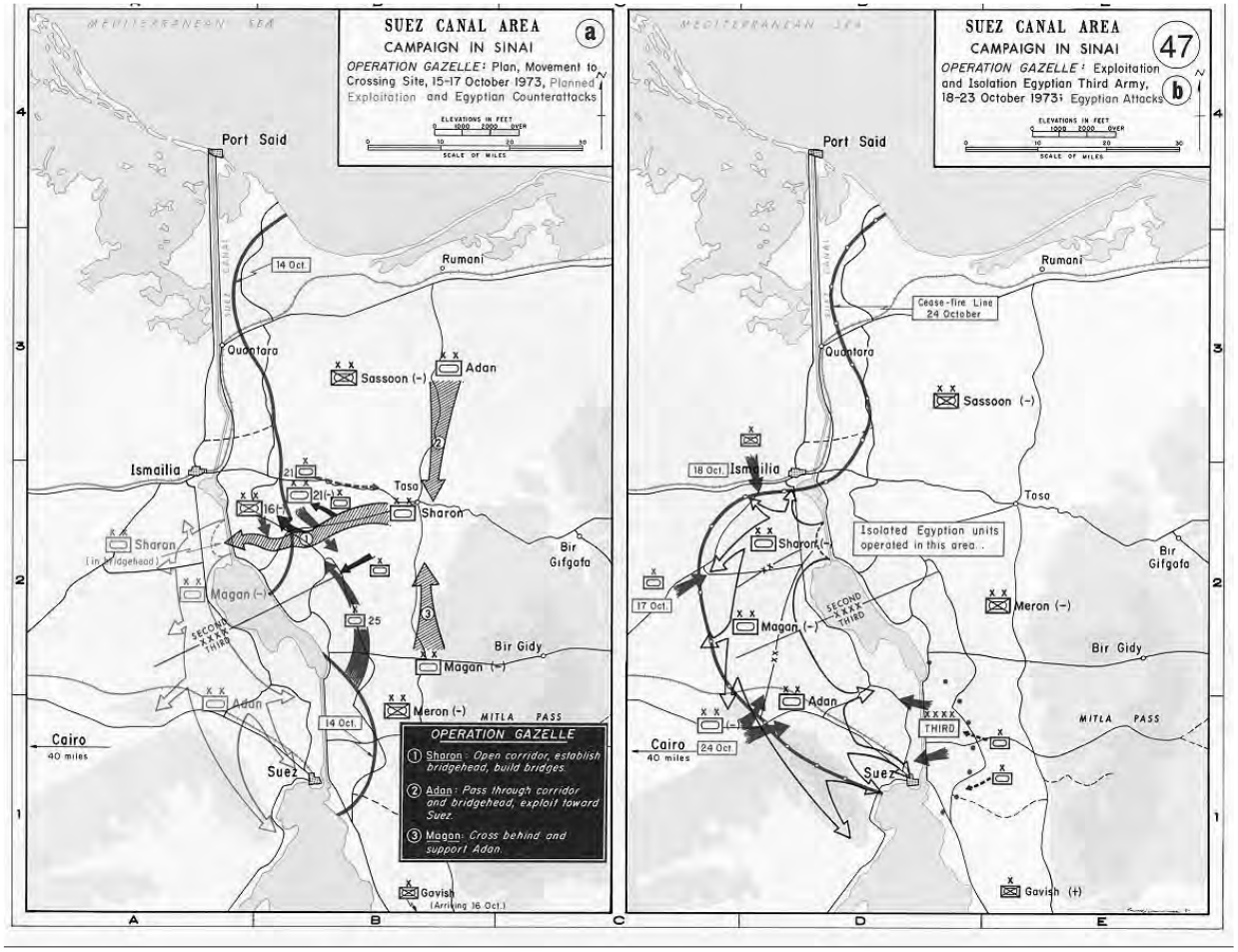


Figure 3: Suez Canal Area: Campaign in Sinai
Source: USMA Military History Atlas, http://www.dean.usma.edu/history/web03/atlases/atlas_toc.htm

Figure 4: Suez Canal Area: Campaign in Sinai: Operation Gazelle
Source: USMA Military History Atlas, http://www.dean.usma.edu/history/web03/atlases/atlas_toc.htm



1973

13 Sep—Air battle with Syria; 23 Sep—Syria deploys in defensive positions/calls up reserves; 24 Sep—Israel begins strengthening Golan; 25 Sep—King Hussein warns Meir of Syrian intention to attack; Egyptian deployments noted; 29 Sep—Meir to Europe (previously planned trip); 27 Sep—Egypt mobilizes reserves (twenty-third time in 1973); 28 Sep—Terrorists attack train in Austria; Schonau transit facility closed

Sun	Mon	Tue	Wed	Thur	Fri	Sat
Sep 30 Mossad HUMINT says war coming Egypt to Syria: "go" CIA/INR report calms Kissinger	**Oct 1** LT Siman-Tov warns war coming Egyptian exercise "Tahrir 41" begins Syria deploys more	**2** Bridging equipment moves, both fronts Syria calls reserves 1400 time of attack agreed Meir to Vienna	**3** Soviets informed Meir returns from Austria Siman-Tov's 2nd Rpt Kitchen Cabinet briefed "low"	**4** Sinai recon reveals artillery/ammo Soviet evacuation Soviet navy leaves Mossad source requests meet	**5** Israel cabinet meets: Alert IDF, but no mobilization and prob. still "low" Mossad Chief warned by source	**6** 0400—War at 1800 0930—Mobilize/not preempt 1400—War begins *Yom Kippur*
7 Egypt establishes bridgehead Syria threatens southern flank	**8** Israel's "worst defeat" in Sinai Syria near-break-through "3rd Temple" falling	**9** Meir proposes visit to United States Sinai stabilizes Tide reverses in Golan	**10** Israel regains ground lost in Golan	**11** Counterattack into Syria Syria requests Egyptian attack	**12** Israel would accept cease-fire in place Meir letter to Nixon	**13** U.S. airlift begins Syria offensive begins to stall
14 Egyptian attack defeated Syria lines harden	**15** Israeli thrust toward canal begins	**16** First Israeli forces to west of canal Kosygin travels to Egypt	**17** Battle for corridor to canal	**18** Bridge over canal secured Sadat agrees to cease-fire	**19** Israeli breakout west of canal aimed at Suez	**20** Kissinger to USSR
21 Kissinger in USSR	**22** UNSCR 338 calls for cease-fire Kissinger visits Israel	**23** Fighting continues; Israel closes toward Suez	**24** USSR threatens unilateral action United States to DEFCON III	**25** Cease-fire observed by both sides	**26**	**27**

APPENDIX

Biographical Highlights of President Anwar Sadat

1918 Born in the village of Mit Abul-Kum; son of a midlevel government official.

1925 Family moves to village near Cairo. Sadat's life-long inspiration is Zahran, an Egyptian who killed a British soldier who had shot at Egyptian civilians. Zahran remained fearless before his execution because he "rejected anything and anyone who tried to humiliate him and his people."[58]

1936 Graduates from secondary school; begins education at national military academy.

1938 Graduates from national military academy; connects with Gamal Abdel Nasser, fellow junior officer and future Egyptian hero.

1939–1941 Forms the "Free Officers" organization and leads discussions intended to prepare officers to oppose the Egyptian King Farouk and the British protectorate.

1942–1945 Stripped of his rank and jailed for trying to establish radio communications with Rommel to coordinate Egyptian efforts with Rommel's invasion of Egypt. Nasser replaces Sadat as leader of the Free Officers. In October 1944, he escapes from jail and lives 11 months as a fugitive until martial law ends in September 1945.

1946–1948 Jailed for conspiring in the murder of a prominent pro-British politician.

1950 Restored to Egyptian officer corps at his previous rank of captain. He rapidly advances to LtCol via special examinations given due to the Free Officers' support.

1951 Nasser brings Sadat into the Free Officers inner circle, the Constituent Council.

1952 The Free Officers overthrow King Farouk and establish government. During the first hours of the coup, Sadat is with his wife at a movie. Sadat attributes this to a lack of clear communication in the hours after he returned to Cairo.[59] Sadat makes the public announcement of the coup the following dawn. He serves on the "Revolutionary Command Council," consistently supporting Nasser from his position as secretary general of the dominant Arab Socialist Union party.

1956 Suez Crisis. Nasser's political triumph, after military defeat, makes him a great hero, especially in the Arab world.

1962 Nasser appoints Sadat as speaker of the National Assembly.

1964 Nasser appoints Sadat as one of four vice presidents.

1967 Humiliation in the Six-Day War, including loss of the Sinai to Israel, prompts Nasser to offer his resignation. Intense popular support keeps him in power.

1969 Nasser appoints Sadat as vice president of Egypt.

1970 Nasser dies of a heart attack. Many doubt that Vice President Sadat will succeed him as president. Rivals underestimate Sadat as he skillfully jockeys for power.

1971 Sadat named provisional president. Attempts to consolidate power through domestic reform and efforts to recover the Sinai.

1972 Intensifies military buildup in Egypt and Syria.

1973 Launches "October War." Sadat takes title "Hero of the Crossing."

1974, 1975 Disengagement agreements made between Egypt and Israel with U.S. mediation.

1977 Sadat goes to Israel for peace talks. He is the first Arab leader to do so.

1978 Camp David Accords signed.

1979 Peace treaty signed between Egypt and Israel.

1981 Islamist radicals in the Egyptian military assassinate President Sadat at a military parade commemorating the 1973 attack across the Suez Canal.

1982 Israel returns the final portions of the Sinai, taken in 1967, to Egypt.

Biographical Highlights of Prime Minister Golda Meir

1898 Born Golda Mabovitch in Kiev, Russia. Jews are routinely attacked by mobs with government acquiescence or encouragement. Meir's earliest clear memory is of helplessness and terror in the face of these pogroms. Hunger and poverty are pervasive. Meir describes her family as "not particularly religious" but observant of Jewish tradition, celebrating holidays and festivals.

1906 Moves to Milwaukee, Wisconsin, United States of America. Meir attends school and helps her mother run a marginally successful shop. Meir becomes a highly regarded spokesperson for the Labor Zionist Party at 17 years of age. She embraces socialism and is deeply committed to the idea of a Jewish national home.

1917 Marries Morris Myerson (Meir); he is a fellow Zionist, but less passionate.

1921 Moves to Palestine with husband. Meir thrives on kibbutz Merhavia, but her husband does not. She leaves the kibbutz after 2½ years out of duty to husband. The family moves to Jerusalem; Meir is unhappy and impoverished raising her two young children. Represents the kibbutz movement in the Labor Foundation.

1928–1932 Moves to Tel Aviv to become the secretary of the Women's Labor Council, which establishes "workingwomen's farms" to teach job skills and Hebrew to new immigrants. Her husband stays in Jerusalem, visiting on weekends; the Meirs separate permanently in 1938.

1932 Her daughter nearly dies from kidney disease. Seeking a cure, Meir takes her son and daughter to New York City, beginning two years of work there.

1934 Elected to the Labor Council Executive Committee.

1940–1945 Serves on British War Economic Advisory Council. Works to enlist Palestinian Jews and to create a Jewish Brigade in the British army,

to fight Hitler. Supports desperate efforts to aid Jews being destroyed by Nazis.

1943 Her 17-year-old daughter, Sarah, leaves high school to help found a kibbutz.

1947, 1948 As head of the Political Department of the Jewish Agency, Meir meets secretly twice with King Abdullah of Transjordan. She obtains what she views as his commitment to remain neutral in the looming war. In May 1948, just days before the war, the king tells her that he is not free to remain neutral, referring indirectly to Egypt, Iraq, Lebanon, and Syria.[60]

1948 Signs Israel's Proclamation of Independence; leads fund-raising in the United States that allows purchase of $50 million in military supplies and equipment during the war. Appointed Israel's ambassador to the USSR.

1949 Elected to Israeli legislature; becomes minister of labor. Member of the Mapai, the Labor Party.

1951 Her husband dies while she is overseas raising money for Israel.

1956 Becomes foreign minister.

1969 Becomes fourth prime minister of Israel.

1970 "Black September" hijackings.

1972 Fedayeen terrorists massacre 11 Israeli athletes at Munich Olympics. Meir authorizes killing of those involved. 100 Israeli aircraft attack Fedayeen camps in Syria and Lebanon.[61] The three terrorists captured at Munich are released by West Germany six weeks later in exchange for hostages.

1973 "October War."

1974 Resigns from parliament. Although the initial Agranat report clears her of any direct responsibility for the problems in the war, she has been politically and emotionally hurt. She describes Israel as suffering "trauma" after the war.[62]

1978 Dies of cancer.

Reflections from Prime Minister Meir Concerning 5 and 6 October 1973

Golda Meir's autobiography describes her thinking and actions on Friday, 5 October and Saturday, 6 October 1973, just before the war. It also shows the burden she carried afterward.

"On Friday, October 5, we received a report that worried me. The families of the Russian advisers in Syria were packing up and leaving in a hurry. It reminded me of what had happened prior to the Six-Day War, and I didn't like it at all."[63]

"In the welter of information pouring into my office that one little detail had taken root in my mind, and I couldn't shake myself free of it. But since no one around me seemed very perturbed about it, I tried not to be obsessive."[64]

"I asked the minister of defense, the chief of staff, and the head of intelligence whether they thought this piece of information was very important. No, it hadn't in any way changed their assessment of the situation. I was assured that we would get adequate warning of any real trouble, and anyway, sufficient reinforcements were being sent to the fronts to carry out any holding operations that might be required."[65]

Following the meeting on noon, Friday, 5 October, Prime Minister Meir felt very uncomfortable with the situation and stayed in her office for much of the afternoon. Yom Kippur, the Jewish Day of Atonement, the holiest of Jewish holy days, began at sunset Friday.

"How could it be that I was still so terrified of war breaking out when the present chief of staff, two former chiefs of staff (Dayan and Chaim Bar-Lev, who was my minister of commerce and industry) and the head of intelligence were far from sure that it would?"[66]

"I knew as well as anyone else what full-scale mobilization meant and how much money it would cost, and I also knew that only a few months before, in May, we had had an alert and the reserves had been called up; but nothing had happened. But I also understood that perhaps there had been no war in May exactly because the reserves had been called up. That Friday morning, I should have listened to my own heart and ordered a callup. For me that fact cannot and never will be erased, and there can be no consolation in anything that anyone else has to say or in all of the commonsense rationalization with which my colleagues have tried to comfort me. It doesn't matter what logic dictated. It matters only that I, who was accustomed to making decisions—and who did make them throughout the war—failed to make that one decision. I, too, can rationalize and tell myself that in the face of such total certainty on the part of our military intelligence—and the almost equally total acceptance of its evaluations on the part of our foremost military men—it would have been unreasonable of me to have insisted on a callup. But I know that I should have done so, and I will live with that terrible knowledge for the rest of my life."[67]

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28. Shlaim, "Failures," 353–4.
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30. Cohen and Gooch, *Military Misfortunes,* 107.
31. Bar-Joseph, "The Wealth of Information," 233.
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"We Have Some Planes" 11 September 2001

RICHARD J. NORTON

INTRODUCTION

The morning of 11 September 2001 began one of the historic and terrible days in U.S. history. On that day the most famous urban skyline in the world changed forever, the most well-known symbol of U.S. military power and leadership was set ablaze, and the president and vice president sought safety in the skies or deep underground. Millions of U.S. citizens who had taken their safety and security for granted would never feel completely safe or secure again. Most of the attack had been captured on video, and the whole world was able to watch repeatedly as the United States suffered a blow of unprecedented scope and type.

The new insecurity was all the more jarring because anyone who, on 10 September 2001, argued the United States was safe could easily have defended that conclusion. To all appearances the country not only was exceptionally well guarded, but also possessed an active and robust capability to identify and engage potential opponents anywhere on the globe. More than a dozen federal agencies, executive departments, and military services, as well as local and state authorities, were devoted to protecting the United States and to discovering and neutralizing the country's enemies.[1] Leaders of these agencies had apparently taken care to ensure their organizations could work together as well as with allied states and key international bodies. National leaders were aware a terrorist threat existed and were seeking ways to neutralize or destroy al Qaeda and its leader, Osama bin-Laden.[2]

HISTORICAL ROOTS: THE THREAT EMERGES

In a very real way, the roots of the 9/11 attacks can be traced to two historical events. The first was the invasion of Afghanistan by military forces of the Soviet Union in 1979. Afghan resistance groups, known as Mujahadeen, sprang up immediately, attracting support and recruits from other Muslim states. In 1980, then-twenty-three-year-old Osama bin-Laden traveled from his native Saudi Arabia to fight the Soviets. He saw some combat but rapidly became more useful as the architect of "the golden chain," a source of fund-raising and recruiting.[3] The United States eventually determined assisting the Mujahadeen was in its best interests and funneled weapons, most notably Stinger antiaircraft missiles, and financial support to the Muslim fighters. The war lasted nearly a decade, but by February 1988, the Soviets had retreated from Afghanistan.

Although the Russian decision to abandon the Afghan adventure was influenced by multiple factors, not the least of which was a badly decaying economy, bin-Laden had a different point of view. In his eyes, the Mujahadeen had militarily defeated one of the world's superpowers and driven it from Afghanistan. He was also convinced the organization he had built was too valuable to be allowed to dissolve after the fighting had stopped. The organization, renamed al Qaeda, would prepare Mujahadeen to fight anywhere in the world.[4]

One of bin-Laden's first allies was Hassan Turabi, the leading hard-line politician of Sudan. Turabi invited bin-Laden to join him in Khartoum. The relationship was mutually beneficial. Al Qaeda's money and fighters assisted Turabi in fighting a nasty civil war against Christian Sudanese in the south of the country. Bin-Laden found political safe haven and plenty of room for his training camps. While in Sudan, al Qaeda grew into a truly worldwide organization and established connections to groups in the United States.[5]

Saddam Hussein's invasion of Kuwait was the second historically important event in the evolution of al Qaeda. With the kingdom of Saudi Arabia facing a direct military threat, bin-Laden offered his Mujahadeen as a force capable of defeating the Iraqi invaders. Bin-Laden was dismayed and enraged when King Fahd not only refused the offer, but also turned to the United States and a coalition of predominantly western, non-Muslim countries to save Saudi Arabia.[6] In 1992, in the wake of the coalition victory over Saddam and the continued presence of U.S. forces in Saudi Arabia, al Qaeda issued its first fatwa. This religious edict called for jihad (i.e., armed struggle) to be waged against the western occupiers of Muslim lands. The United States was first on the list of offenders. Even at this relatively early date bin-Laden expressed the need to "kill the head of the snake."[7]

Al Qaeda claimed to have been active in Somalia during the U.S. intervention, allegedly providing both training and weaponry to the forces of various Somali warlords. After the departure of U.S. forces, al Qaeda claimed responsibility for shooting down two Blackhawk helicopters during the battle of Mogadishu. Al Qaeda also took partial credit for driving the United States out of Somalia.[8]

In 1993, in the wake of the February bombing attack on the World Trade Center, Khalid Sheikh Mohammed, an expatriate Pakistani, began to think about attacking the United States. Like bin-Laden, Khalid Sheik Mohammed had a history of escalating involvement in terrorism. He had also fought as a Mujahadeen and was the uncle of one of the men involved in the 1993 World Trade Center bombing. Khalid Sheikh Mohammed believed the greatest bang for the terrorist buck would be realized through attacks on the U.S. economy. Accordingly, he moved New York City and the World Trade Center to the top of his initial target list.[9] Khalid Sheikh Mohammed refined his thinking during the next several months. Determining the use of bombs was too problematic; he considered striking at the towers with aircraft and concocted an incredibly audacious plan. Ten aircraft would hit targets on both U.S. coasts. An eleventh aircraft would land and provide a platform for Khalid Sheikh Mohammed to explain himself to the world. Bin-Laden, after being sent a copy of the plan and reviewing the proposal, rejected the idea as "too complicated."[10]

But all was not going bin-Laden's way. In 1994 he was evicted from Saudi Arabia, his Saudi citizenship revoked and his personal financial assets frozen. Bin-Laden left the kingdom for Sudan in 1995.[11] Recognizing bin-Laden as a threat, the United States put pressure on Sudan to deny al Qaeda safe haven. In May 1996, these efforts paid off and bin-Laden was expelled from Sudan. He moved to Afghanistan, where Taliban forces had just captured Kabul.[12] The arrangement was once again one of mutual benefit.

Bin-Laden and Khalid Sheik Mohammed first met face-to-face in 1996. Khalid Sheikh Mohammed used the opportunity to pitch a new version of his plan. He proposed striking the United States by flying aircraft into key buildings. Although this meeting may be considered the starting point of the 9/11 attacks, bin-Laden was noncommittal at the time.[13] Bin-Laden formally declared global war on the United States in February 1998. He and his second-in-command, Ayman al-Zawahiri, an Egyptian, published a fatwa in the name of the World Islamic Front. The fatwa called on every Muslim to murder U.S. citizens everywhere they were to be found. Bin-Laden made it clear there was to be no distinction made between combatants and noncombatants. In an interview with ABC he threatened that the battle would inevitably move to U.S. soil.[14]

Al Qaeda's next major action took place six months later when it subjected U.S. embassies in Kenya and Tanzania to coordinated and simultaneous bombing attacks. The explosions were the culmination of five years of planning.[15] These attacks convinced Khalid Sheikh Mohammed that bin-Laden was serious about attacking the United States. Accordingly, Khalid Sheikh Mohammed formally joined al Qaeda and entered into bin-Laden's trust and confidence. In late 1998 or early 1999, bin-Laden approved Khalid Sheikh Mohammed's plan. Within al Qaeda the mission was referred to as "the planes operation."[16] Initially, in addition to striking targets in the United States, the plan called for hijacking additional aircraft in East Asia and destroying them in flight.[17]

HISTORICAL BACKGROUND: U.S. SUCCESSES

In the post-9/11 world, it is easy to forget how difficult the planes operation must have seemed to be to its proponents in 1999. For one thing the United States was not new to counterterrror operations. While successful attacks had been carried out against U.S. citizens, Washington had also had its share of victories.

An earlier outbreak of anti-U.S. terror occurred in the mid-1980s, when President Ronald Reagan made combating this threat a top priority. National efforts were coordinated through a very senior interagency working group chaired by the Assistant to the President for National Security Affairs (APNSA), more commonly called the National Security Advisor (NSA).[18] Acting on the findings of a commission led by then–vice president George H. W. Bush, the Central Intelligence Agency (CIA) formed the Counterterrorism Center. The purpose of the program was to coordinate all CIA counterterrror activities. An FBI agent was assigned to the center as a liaison officer.[19] Although not related directly to terrorism, the reorganization of the Department of Defense that stemmed from the Goldwater-Nichols

Act of 1986 was also seen as benefiting counterterror efforts as it reduced tension and increased cooperation among the services.[20]

The United States achieved several impressive field successes during this time period. Perhaps the most dramatic was the capture of terrorists who hijacked the Italian cruise liner *Achille Lauro*. The 1986 raid on Libya was widely credited with stopping a worldwide Libya-backed terror campaign, although the attack may have also prompted a reprisal strike against Pan American Flight 103, which was destroyed by a bomb over Lockerbie, Scotland, on 21 December 1988. After many years of painstaking work, the FBI uncovered evidence resulting in the 1991 indictment of two Libyan agents for the bombing. On 31 January 2001, after years of negotiations with the Libyan government and a lengthy trial, one of the two men was found not guilty. The other was convicted of murder and is currently serving a life sentence in Scotland. The so-called law enforcement approach to counterterrorism regarding the 1993 attack on the World Trade Center also yielded results. Good police work, primarily on the part of the FBI, resulted in the arrest of the attackers. The Justice Department built a strong criminal case, and the terrorists were tried and convicted. Lessons learned from the attack were used to improve U.S. capabilities to detect and prevent terror attacks. Chief among these improvements was the creation of a worldwide, real-time database of visa, law enforcement, and watch list information known as the TIPOFF list. The TIPOFF list was maintained and primarily used by the State Department.[21]

In the wake of the 1993 attack on the World Trade Center, the Clinton administration took a serious look at how the United States was organized to fight terrorism. The administration instituted a division of labor at the macro level. The FBI would be responsible, as it had been since the 1930s, for combating terrorism inside the United States. The CIA would fight terrorism on the international front. The National Security Agency (NSA) would conduct worldwide communications gathering efforts in support of other organizations.[22] Two years later the FBI successfully handled the 1995 bombing of the Murrah Federal Building in Oklahoma City. Terrorists Timothy McVeigh and Terry Nichols were rapidly arrested, prosecuted, and convicted.[23] McVeigh was executed and Nichols was sentenced to life imprisonment.

THE FBI AND THE DEPARTMENT OF JUSTICE

Any effort to prevent or respond to terrorist actions inside the United States involves the FBI. Yet the bureau's successes may have led to organizational blindness regarding several structural weaknesses. For one thing, the bureau was extremely decentralized, split into fifty-six field offices. Each office was commanded by a special agent-in-charge (SAIC) who was authorized to set office priorities and apportion resources, including personnel, as needed.[24] Furthermore, success for an FBI agent was measured in terms of arrests, prosecutions, and convictions. Since work in counterintelligence and counterterrorism, being primarily preventive in nature, did not produce such results, these areas were not considered career-enhancing.[25]

Another structural flaw concerned the manner in which the FBI assigned responsibility for complex cases. The first field office to become involved with a case was designated the "office of origin" and would then be accorded operational authority for all related cases. As a result of this system, other field offices would sometimes be reluctant to commit assets to what was essentially another office's case.[26] There were also problems involving the sharing of information between the FBI and the Department of Justice. In part, these procedures grew out of an FBI history of exceeding its authority during J. Edgar Hoover's decades-long directorship. One of the controls imposed on the bureau and the Justice Department was the Federal Intelligence Surveillance Act of 1978. The act required the FBI to obtain court approval for any intelligence-related searches and surveillance carried out inside the United States. Over the years, the Justice Department interpreted the law as allowing criminal prosecutors to be briefed on, but have no control over, the collection of FISA information.[27]

In 1995, in an effort to facilitate sharing between the Justice Department's criminal and intelligence divisions, Attorney General Janet Reno established departmental guidelines. The result, undoubtedly inadvertent, was the creation of what came to be known as "the wall." The term referred to a perceived barrier separating criminal and intelligence information and preventing the sharing of such information. Over time, the Justice Department's Office of Intelligence Policy and Review became the sole gatekeeper for passing intelligence information to the criminal division. Although the practice was originally intended to deal with information-sharing between agents and criminal prosecutors, custom extended it to any agent working with intelligence matters and anyone outside the intelligence field. By the time of the 11 September attacks FBI employees had developed the operative belief that no intelligence information could be shared with any criminal investigators. This belief extended to members of the CIA and NSA. As a result, sharing such information become the exception, rather than the norm.[28]

CENTRAL INTELLIGENCE AGENCY

The CIA had internal issues that affected its performance of international counterterrorism. The tenure of William Casey as Director of Central Intelligence in the Reagan years had been stormy, and the CIA's reputation had been damaged over such issues as the Iran-contra affair. In the 1990s, CIA leadership was reluctant to support national leaders who recommended taking aggressive action against al Qaeda.[29] The growth of twenty-four-hour news services also put pressure on the CIA. National leaders expected to learn about important developments before seeing them on CNN, and this expectation had become increasingly difficult for intelligence agencies to arrange. The CIA was also stung by a perceived failure to detect Pakistan's nuclear capability. All these issues pointed to a Cold War structure—designed to discern an enemy superpower's intentions and give strategic warning of war—that was less adaptable to the new post–Cold War environment.[30]

One of the things that had not changed in the agency was an abiding concern with internal security. The CIA had suffered several humiliating penetrations by Soviet agents during the Cold War, and CIA agent Aldrich Ames's treason in the early 1990s was still a painful memory to many in the organization. As a result counterterrorism capabilities were often

hamstrung by extensive vetting procedures, a distrust of outside talent, and suspicions about new technologies such as the Internet. This problem was exacerbated by a lack of required homegrown talent with foreign-area expertise. For example, there were only six undergraduate degrees in Arabic awarded to U.S. citizens in 2002.[31] When combined with a fear of "the wall" that rivaled the FBI's, the result was a pronounced reluctance to share information with anyone outside of the CIA.[32]

OTHER ACTORS

Several other agencies provided essential services in the task of protecting the United States from terrorist attack. These included the State Department, which was responsible for issuing travel visas to non–U.S. citizens wishing to visit or stay in the United States. The U.S. Marshals and the Drug Enforcement Agency (DEA) also had a role in the counterterror mission. These organizations had more than 8,000 operational personnel between them. The marshals were expert at finding fugitives within the United States and with working with local law enforcement. The DEA had a wide variety of intelligence sources that were frequently useful to CIA and FBI counterterror experts.[33]

The Immigration and Naturalization Service (INS) and U.S. Customs were also members of the counterterrorism community. The INS employed 9,000 border agents as well as 4,500 inspectors and 2,000 immigration special agents. However, during the years leading to the 11 September attacks the INS focused on the southern border between the United States and Mexico. Efforts to create counterterror procedures had failed in the 1980s and the early 1990s. In 1997, the INS finally established its National Security Unit, with Hamas and Hezbollah as its primary targets of interest. The unit recommended that CIA security checks should be completed before approving a person's naturalization request. This effort was unsuccessful.[34]

THE FEDERAL AVIATION ADMINISTRATION

There was also the Federal Aviation Administration (FAA). The FAA's charter makes it responsible for regulation of safety and security issues for U.S. commercial aviation. There was, and is, a certain tension between these two duties. The agency tried to accomplish its mission by establishing and enforcing rules that civilian air carriers and airports had to follow. Before the 11 September attacks the FAA viewed sabotage as the primary threat facing U.S. aviation, and attack by man-portable shoulder-fired antiaircraft weapons as the next most worrisome problem.[35] With these threats in mind, the FAA leadership had created a layered set of defenses at U.S. airports. The first layer was intelligence. The FAA had a forty-strong intelligence unit designed to identify both specific plots and general threats aimed at U.S. aviation. Once these were identified, the unit would help develop appropriate countermeasures. Unfortunately, while the unit had access to a veritable fire hose of information, none of it related to terrorists within the United States. In any case, much of the information remained in the unit. There was no review of daily intelligence by FAA officials, and what little intelligence information they did receive was heavily screened.[36]

The next layer of defense was passenger prescreening. The FAA ordered carriers not to fly individuals who were considered "direct threats." But this list was a short one. On 11 September 2001 the list contained only twelve names. In contrast, other government watch lists ran into the thousands. Again, there were disconnects with the FAA leadership, some of whom admitted they did not know of such things as the State Department's TIPOFF list. While the FAA had access to TIPOFF data, operators had found it "too difficult to use."[37]

The third layer of defense consisted of checkpoint screening in airports. Metal detectors and X-ray machines formed the technological backbone of this layer, with trained operators providing the human element. That this layer of defense often failed was well known. The machines were relatively unsophisticated. The operators were not paid especially well, and the work was tedious and rarely appreciated by the flying public. Nor were the regulations especially tight. The FAA did not prohibit knives with blades less than three inches in length, and the airlines expressly permitted them. A 1993 proposal to ban all knives in the passenger compartment had been rejected. Although FAA regulations required "continuous and random hand searches" of carry-on luggage, this was not being done in 2001 unless a passenger tripped an alarm. All these practices were common knowledge to anyone who routinely flew in the United States.[38]

The last layer of defense was hardly a defense at all. This layer was located in the actual aircraft and consisted of procedures to be followed by the flight crew. The most basic assumption supporting these procedures was that the intent of a hijack was to take the plane somewhere and that suicide was not part of the plan. Thus, nonconfrontational, ever-vigilant cooperation was the preferred and taught behavior.[39] On balance, then, at the time of the 11 September attacks the leadership of the FAA was focused on efforts to create a "passengers' bill of rights." They were also, as usual, ready to attempt to improve carrier and airport efficiency, effectiveness, and customer satisfaction. There was no focus on terrorism.[40]

THE ROLE OF CONGRESS

Given that so much of the national defense against terrorism centered on federal agencies and organizations, it is natural to ask to what extent Congress—which is charged with oversight of federal actions and agencies—was involved in the counterterror effort. Oversight of federal actions and agencies is one of the duties of Congress. The quick answer is that Congress played a surprisingly small role. In part this was due to how oversight over intelligence activities was conducted. The intelligence committees enjoyed only limited and nonexclusive oversight authority. The members of these committees served for a limited time. Because the information dealt with is highly secret and rarely, if ever, can be used to bring federal funding to home states and districts, there is a lack of both public watchdogs and political economic self-interest to spur the committees to action.[41] Consequently, Congress did not understand bin-Laden's capabilities or the level of threat he posed to the United States. Also, Congress, like the agencies it was watching over, had not undergone any realignment after the end of the Cold War. Congressional staffs were focused on other hot topics, including immigration along the southwest border, the ability of the FBI to manage large technical projects, whether or not to impose sanctions on Pakistan, the Middle

East peace process, and, of course, the need to be re-elected. In short, Congress was not focused on terrorism either.[42]

THE UNITED STATES TARGETS AL QAEDA AND SURVIVES Y2K

In 1998, following al Qaeda's attack on the U.S. embassies in East Africa, the U.S. government formed an National Security Council (NSC)-led interagency committee on terrorist financing. The committee rapidly recommended, and President Clinton endorsed, freezing any fiscal assets belonging to either bin-Laden or al Qaeda. As it turned out, neither bin-Laden nor his organization had much money inside the United States.[43] Although the FBI learned a great deal about the structure of al Qaeda, it was unable to disrupt its money flows.[44] There was also an indirect connection between terrorism and the efforts of the U.S. government to counter predicted worldwide computer failures generally referred to as "Y2K." Had the predicted systemic computer failures occurred, terrorists might have been able to take advantage of the confusion and carry out one or more attacks.[45] In the event, the new millennium arrived without a glitch, which provided further reassurances to leaders who believed the United States was well protected.

AL QAEDA MOVES FROM PLANNING TO PREPARATION; THE CLINTON ADMINISTRATION LOOKS TO ITS DEFENSES

In the spring of 1999, Khalid Sheikh Mohammed and bin-Laden generated a target list for the planes operation. The first four operatives who would take part in the attack were handpicked by bin-Laden. These individuals were already in possession of U.S. travel visas. From the beginning travel issues complicated al Qaeda's planning. For example, getting U.S. visas was very difficult for Yemenis, as compared to Saudis. It was also decided to insert the attackers into the United States in waves. The first groups to enter would be the pilots who would need training. The men who would actually capture the aircraft, often referred to as the muscle or muscle men, would enter the United States much later.[46]

In July, President Clinton added the Taliban to the list of organizations and individuals whose assets were to be frozen. The United States seized $251 million in Taliban assets. Although small by some measures, this was a much greater financial setback than that dealt to bin-Laden earlier in the year.[47] Counterterrorist expert Richard Clarke wanted still more to be done. Clarke, a senior member of the NSC staff in charge of counterterrorism, had achieved an unprecedented level of positional power and influence. His interagency working group, the Counterterrorism Security Group, was by design junior to the Deputies Committee but achieved the status of a parallel deputies committee, with Clarke in some ways acting as if he were the Deputy Assistant (Counterterror) to the NSA. Thus, when Clarke spoke, people listened. His power was not welcomed by everyone in Washington. For example, Secretary of Defense William Cohen made it clear he wanted no flag or general officer speaking to Clarke without the secretary's knowledge. In the words of General Hugh Shelton, then chairman of the Joint Chiefs of Staff, "Clarke's been over at the NSC so long that he thinks he owns counterterrorism—and knows more about the subject than anyone in government. He likes to talk, drops a lot of names and thinks highly of himself. But

in many ways he's not very practical."[48] But there were also limits to Clarke's power. Although a senior member of the NSC staff, he had very few people actually working for him. He could recommend, but not order, changes to national policies, procedures, and organizations. Furthermore, his power was dependent on the amount of leeway and support he received from the Assistant to the President for National Security Affairs. Clarke, like many people in similar positions in government, had to rely on his ability to influence others rather than command them. Thus, personal diplomacy and tact, the ability to reason and persuade, the ability to debate and at times compromise, were essential tools. Unfortunately for Clarke, he was not always adept with these tools.

In an effort to improve counterterror capabilities, Clarke argued for the establishment of an all-source terrorist financing intelligence center at the Treasury Department. Resistance to the idea was significant. The CIA, FBI, Justice Department, and Treasury Department were unwilling to commit the resources such a center would require. At the time, Treasury's main efforts were focused on stopping drug-related currency flows. Stopping terrorist financing was not mentioned in the Treasury's national strategy for money laundering until after the attacks of 9/11.

MEANWHILE, IN AFGHANISTAN

The first four hijackers were trained in an elite al Qaeda facility in Afghanistan during the fall of 1999. The camp's purpose was to train operatives who had been assigned only the most important missions. Each man had been personally selected by bin-Laden. Following this portion of their training, the men were sent to a safe house in Karachi, Pakistan. Here they were taught about Western culture, took language classes, learned the use of computer flight simulators, and spent time watching films about hijackings.[49] Before the year was over, the hijackers were already casing different types of aircraft and airport security. One of the lessons they learned was that box cutters were allowed on aircraft.[50]

In December 1999, Jordanian intelligence forces uncovered an extensive al Qaeda terrorist plot. The information was quickly shared with CIA Director George Tenet. Tenet subsequently warned the NSC. Richard Clarke recommended the United States respond, both delivering an ultimatum to bin-Laden and also attacking al Qaeda training facilities in Afghanistan during the last week of January 2000. This recommendation was not acted upon.[51] But although no bombs were falling, the United States was far from idle. The State Department formally warned the Taliban they would be held responsible for any future al Qaeda attacks. General Anthony Zinni, USMC, commanding U.S. Central Command, visited General Pervez Musharraf of Pakistan. Serving as the president's envoy, Zinni told Musharraf to "take whatever action was needed to solve the bin-Laden problem."[52] Despite this encouragement, Musharraf took no action against al Qaeda or bin-Laden on account of the enormous internal political difficulties such actions would raise. Islamist radicalism was on the rise in Pakistan and enjoyed influence in its military establishment and especially the intelligence services, which made regime security a critical concern for Musharraf.

The CIA followed a different path. Working in conjunction with at least twenty other foreign security agencies, the agency set out to detain or watch bin-Laden's associates. To further this effort, President Clinton signed a Memorandum of Notification that authorized the CIA to use third-party assets to detain bin-Laden's lieutenants without subsequent transfer to the United States. The CIA and the State Department also issued worldwide threat advisories at this time.[53]

On 14 December 1999, Ahmed Rassan, an Algerian-born terrorist, was arrested carrying explosives into the United States from Canada. Although the full details of his mission were not learned until 2001, authorities discovered the plan was to use the explosives to detonate a bomb in the Los Angeles airport (LAX) on 1 January 2000.[54] As additional information was obtained, U.S. authorities quickly determined at least one additional contact in the United States was involved in the plot. In response to this information Richard Clarke's small group of principal presidential advisors met more often. The FBI increased its number of requests for wiretaps. Local police were advised to be even more vigilant in their counterterrorist activities. The Justice Department went to a higher state of alert. Clarke became increasingly convinced terrorist sleeper cells were operating in the United States.[55]

In reality the Rassan plot was only loosely affiliated with al Qaeda. While Rassan was attempting to bomb LAX, bin-Laden was focused on two separate missions. One was an effort to attack a U.S. warship in Aden. The second was the planes operation. On 3 January 2000 an attempt was made to conduct a suicide bombing against the guided missile destroyer USS *The Sullivans* while the ship was in Aden. The ship was spared when the attackers miscalculated and overloaded the boat they intended to detonate alongside the target.[56] However, the terrorists managed to salvage their materials without alerting the United States.[57]

THE NEW MILLENNIUM ARRIVES

In the first weeks of January 2000, the planes operation also was nearly detected and disrupted. Khalid Sheikh Mohammed took his four operators to what amounted to a major terror planning meeting in Kuala Lumpur. The National Security Agency made a communications intercept indicating a pending meeting of operational al Qaeda cadres in Kuala Lumpur.[58] The information was passed to the CIA, and at least one suspect was rapidly identified and tracked to Malaysia. The CIA's Counterterrorism Center shared this information with the FBI and the NSC. U.S. and Malaysian surveillance teams initially observed the suspects, but subsequently lost them in Kuala Lumpur.[59] When this happened, the suspects' names were placed on a Thai watch list. The Malaysians were able to obtain photographs of the attendees, two of whom participated in the 11 September attacks.[60]

The reliance on Malaysian agents pointed out two problems facing the CIA in the field. The first was that unless Washington was willing to risk potentially painful and serious international incidents, local intelligence agencies had to be aware of the U.S. operation. Second, following the conclusion of the Cold War, the CIA had allowed its human intelligence (HUMINT) capabilities to diminish.[61]

The photographs were sent to CIA headquarters in Langley, Virginia, where they were identified. The two men who would participate in the 11 September attacks were Khalid al Mihdhar and Salem al Hazmi. The CIA had previously known of the men's affiliation with al Qaeda, but did not consider the affiliation to be "exceptional." Information concerning their attendance at the Kuala Lumpur meeting was not provided to other agencies.[62] The CIA was aware the State Department had issued al-Hazmi a visa to the United States in April 1999. They also possessed a copy of Mihdhar's passport, complete with multiple U.S. entry visas. Despite this knowledge, the CIA placed neither name on the State Department's TIPOFF list, or on any of the disparate watch lists maintained at the time by the FBI, the U.S. Customs Service, or INS.[63]

This meeting was a missed opportunity. Important future al Qaeda operations were discussed in Malaysia. Additionally, money used to finance the eventual attack on the USS *Cole* was delivered to the attack director during this meeting. The CIA, however, did not learn of this as they were unable to get listening devices in position to monitor the conversations.[64]

AL QAEDA'S PREPARATIONS CONTINUE: THE UNITED STATES IS PENETRATED

On 15 January 2000, the first al Qaeda pilots arrived in the United States, entering through LAX.[65] To this day, some U.S. leaders believe these men received assistance from members of the Saudi espionage service.[66] Shortly after these pilots arrived in the United States, bin-Laden canceled plans to hijack additional aircraft in Asia. The reason for the decision was the perceived degree of difficulty in coordinating simultaneous attacks in North America and the Far East.[67]

In January bin-Laden recruited the second group of aircrew terrorists. Although made up of different nationalities, all were students in Germany and known to each other. This group included Egyptian-born Mohammed Atta, whom bin-Laden selected to be in tactical command of the operation.[68] After initial training in Afghanistan, Atta and his team returned to Germany, where they adopted a low-key, nonfundamentalist lifestyle and began researching flight training in the United States. They also began what might be termed long-range reconnaissance. Atta contacted thirty different U.S. flight schools for information on their training programs.[69] At the same time, every member of Atta's group applied for new passports, presumably to erase any visual link to Pakistan. Once passports were obtained, the men applied for visas to the United States. One request was refused, based on the fear of the holder's potential to try and remain in the United States as an undocumented alien.[70]

It should be noted that the plotters were not master spies, nor was al Qaeda the *sine qua non* of clandestine organizations. Several potential weak spots materialized during the preparation phase. One of these concerned the use of couriers due to al Qaeda leaders' fear of the U.S. and other countries' abilities to intercept electronic communications. A second potential vulnerability involved money. The cost of the planes operation is estimated to have been $400,000 to $500,000. These funds were moved and banked in routine ways and, had anyone been seriously looking, susceptible to discovery. However, despite the earlier creation of a U.S. interagency working group to examine and combat terrorist financing, al

Qaeda's funding stream for the planes operation simply disappeared in a much larger ocean of global money movement.[71]

THE ENEMY IS AMONG US

In March 2000, CIA officers in Kuala Lumpur asked Bangkok for any information the Thai government had on Hazmi and Mihdhar, who had been placed on the watch list in January. The answer revealed that one of the two men had vanished from sight, but the other had left Asia and flown to Los Angeles.[72] This information was not shared with anyone outside the CIA's counterterrorism unit. The men were not registered with the State Department's watch list and the FBI was not informed.[73] Hazmi and Mihdhar had been in the United States since 15 January 2000. Two weeks after arriving in Los Angeles the men relocated to San Diego.[74] While there is no proof the men were helped by an al Qaeda cell, many of the members of the 9/11 commission and Senator Graham believe such assistance was provided.[75] While in San Diego, the men pretended to be Saudi students. They used their own names and submerged themselves in the greater Muslim community of southern California. They made friends, some of whom were clearly bin-Laden sympathizers. They moved at least once in San Diego and for a time lived in a house owned by an FBI informant, who claimed he saw nothing suspicious about the men's activities. They had little or no aptitude for English and were extremely poor students in flight school. Mihdhar grew discouraged and flew home to Yemen. By the fall of 2000, Hazmi had also given up flight training and was simply waiting for reinforcements.

As noted, the al Qaeda operatives lived openly under their own names and displayed very little of what the CIA would term tradecraft. This pattern would be consistently displayed by all of the hijackers. At times, the absence of security precautions might have endangered their mission. On four occasions, members of the group, including leader Atta, were pulled over for traffic violations and issued tickets. Another close call involved the break-in and burglary of one of the attackers' apartments. The victim contacted police and filled out a crime report. In each instance, factual biographical data was given to the local authorities.[76]

In Washington the general feeling among the members of the NSC staff was that while the millennium alert had been successful, it had been a close-run thing. Richard Clarke was still not satisfied and pressed for an after-action review. He believed that not only had al Qaeda not been compromised, but also it had established sleeper cells inside the United States. Clarke informed the NSC more attacks were "a certainty."[77] His warnings evidently had an effect. By 10 March 2000, the Principals Committee agreed to increase funding to the CIA in order to accelerate efforts to attrite al Qaeda. It was also agreed to implement a crackdown on U.S. sources of funding for terrorist organizations and to tighten immigration controls.[78]

Clarke and his small staff also saw a significant opportunity to increase cooperation on border security. They wanted an interagency center that would target individuals illegally in the United States and exert tighter control over student visas. Clarke also pushed for the assignment of more immigration agents to the FBI's Joint Terrorism Task Forces and the

activation of a special court that would allow the use of classified information in immigration-related cases.[79] Another of Clarke's initiatives centered on U.S. passports. He wanted the State Department to make it tougher for a terrorist to acquire or use a stolen or forged passport. There was also a recommendation to work with the UN and other members of the international community to raise global standards for travel documents.[80] Clarke also wanted a dramatic upgrade of border crossings and pushed for the development of a method to deal with migrants who intentionally destroyed their identifying documents in order to prevent their return to their country of origin.[81]

Clarke did not find a responsive audience. The disparate agencies that would be affected by the changes were slow to react and even slower to increase cooperation with each other. Each had funding concerns and some of the changes would be expensive to implement. These agencies did not operate in a vacuum. Much of any additional expenditure would have to be scrutinized or approved by congressional committees.[82] Despite this resistance, initiation of many of the recommended changes had just started when the September attacks occurred.

THE "GERMAN PILOTS" ARRIVE

In May 2000, Marwan al Shehi, the first of al Qaeda's "German" pilots, arrived in the United States. Operation leader Mohammed Atta arrived on 2 June. Pilot Ziad Jarrah entered on 27 June. The fourth member, Ramzi Binalshibh, attempted to enter the United States several times, but visa issues prevented him from doing so. The three pilots who did enter the United States took up residence in Florida and began attending flight school. Like their West Coast counterparts, tradecraft was not a strong suit with this group. They paid for their schooling with money wired from Saudi Arabia. With the exception of Jarrah, who earned a private pilot's license in July, all had trouble in flight school. Jarrah had a girlfriend in Germany and remained in contact with her throughout the period. Overall they exchanged thousands of phone calls and e-mails. In fall 2000, Jarrah flew to Germany to see her and did not return until 29 October.[83]

In Washington, the money that had been approved for the CIA came at a good time. The counterterrorism unit was about to go into the red. The bin-Laden unit alone was 140 percent over budget.[84] But the windfall led to arguments between CIA director Tenet and Richard Clarke of the NSC staff. Tenet wanted to apply the money to improve the CIA overall. He especially wanted to restore capabilities that had been lost or degraded since the end of the Cold War. Tenet believed fixing the CIA in general would have a direct payoff in thwarting bin-Laden. Clarke did not buy Tenet's reasoning. He wanted to see the money go directly to the bin-Laden unit.[85] Eventually the Office of Management and Budget became involved. In reviewing the situation they sided with Clarke. Their review showed the CIA had not increased spending on counterterrorism.[86]

Bin-Laden and senior al Qaeda leaders spent the summer recruiting what has become known as the "muscle hijackers." These were the men who would be responsible for physically seizing the aircraft. Yet they were not physically imposing, ranging in height from 5'5"

to 5'7". All were unmarried, most were unemployed, and few had more than a high school education. Twelve of the thirteen were Saudis. They spent the summer training in Afghanistan. There they studied how to conduct a hijacking, disarm air marshals, handle explosives, and storm the cockpit of an airliner. After this portion of the training was over the men were moved to a safe house in Kashmir and then to Dubai, from which they would enter the United States. During the final phase of the training, the men learned how to handle everyday aspects of Western life.[87]

ATTACK ON THE *COLE*

On 12 October 2000 the guided missile destroyer USS *Cole* was successfully attacked and nearly sunk by a suicide bomb attack. Seventeen servicemen and women died. This operation was personally supervised by bin-Laden.[88] In turn, he expected a rapid and violent U.S. reaction to the attack. He immediately went on the move in Afghanistan and ordered senior members of the al Qaeda leadership to disperse to keep U.S. forces from killing them all in one attack.[89] U.S. security officials immediately suspected that bin-Laden had a role in the attack. The FBI, CIA, and Naval Criminal Investigative Service (NCIS) all sent teams to Yemen at once. Gaining the cooperation of the Yemenis, who rapidly took some suspects into custody, was not easy. In rapid succession the DCI, the secretary of state, and the president all contacted their Yemeni counterparts. Eventually the Yemenis produced strong evidence linking al Qaeda to the attack.[90] Al Qaeda's recruiting efforts boomed in the wake of the attack. Bin-Laden directed that a video of the attack be made and widely distributed. Portions of the show were aired on Al Jazeera and other Middle Eastern media outlets. This use of the media also helped al Qaeda's recruiting.[91]

In Washington some bitter exchanges occurred among senior administration officials. Richard Clarke was often involved. In one instance he upbraided DCI Tenet so "sharply" that Tenet literally walked out of a principals meeting.[92] Operational changes were also visible in the aftermath of the *Cole* bombing. The CIA expanded the scope of its operations against al Qaeda. The State Department received presidential permission to try another round of direct discussions with the Taliban's deputy foreign minister in an effort to get bin-Laden expelled from Afghanistan.[93] President Clinton has since stated he was willing to authorize further military attacks in Afghanistan or deliver an ultimatum to the Taliban only if the FBI would have publicly identified bin-Laden as the prime culprit. But this the bureau would not do. Sandy Berger said the farthest the FBI and CIA would go in assigning blame for the bombing was to say they had strong suspicions al Qaeda was responsible for the attack.[94]

Sometime in late October of 2000, the White House stopped keeping paper copies of deliberations involving al Qaeda; all briefings became strictly oral. [95] By 15 November Richard Clarke was certain al Qaeda was to blame for the *Cole* attack, although other government agencies were not as certain. General Tommy Franks, the newly appointed commander of US Central Command, was ordered to reexamine military options.[96] By 15 November Sandy Berger wanted an ultimatum delivered to the Taliban, but none was issued. Given the lack of definitive identification of bin-Laden as the perpetrator of the *Cole*

bombing, the president claimed it would be irresponsible for him to invade a country.[97] Richard Clarke believed that although the Defense and State Departments had reservations about the use of force in Afghanistan, the real reason for the lack of more muscular action was the failure of the CIA and FBI to reach a firm conclusion regarding the involvement of bin-Laden in the attack.[98] Tenet, however, insisted that he was never pressured for a definitive finding by anyone in the administration. In fact he had a totally different view on how such determinations were made. Tenet believed the CIA was required to lay all of the pertinent facts in front of the president and the NSC. It was up to them to decide whether action was warranted and what form that action should take.[99] As to bin-Laden's culpability, the CIA was using the term "preliminary judgment." This was done intentionally, but not to prevent the nation's executive leadership from attacking targets in Afghanistan. Rather, the concern among senior CIA officials was to avoid tying the government's hands in a legal sense, should the issue ever arise in a court of law. Nevertheless, most senior U.S. leaders felt hamstrung by the CIA's terminology, in that acting on such information could give rise to charges the administration had acted before final blame could be determined.[100]

IN WASHINGTON, A TIME OF TRANSITION

Another issue the Clinton administration had to deal with in the last months of 2000 was the task of turning over the government to the incoming Bush team. The CIA and the NSC staff were busy reviewing the briefings and recommendations on countering al Qaeda that they would be making to the new national leaders. The CIA plan, known as the "Blue Sky Memo," featured supporting the Northern Alliance; increasing support to Uzbekistan as an ally in fighting terror; and assisting other anti-Taliban groups and proxies. Above all, the briefers wanted to make the point that no single bullet was going to solve the problem and a multifaceted policy was needed.[101]

The Clinton administration was not briefed on "Blue Sky," in part because it was focused on turning over the White House. During this period Richard Clarke and his team came up with their own plan for taking on al Qaeda, titled "Strategy for Eliminating the Threat from Jihadist Networks of al Qida [sic]: Status and Prospects."[102] Clarke envisioned rolling back al Qaeda over several years. In addition to an active CIA role, Clarke wanted military action to destroy al Qaeda and Taliban command-and-control assets and infrastructure. The paper also expressed concerns about the presence of al Qaeda operatives already in the United States.[103]

While the Clinton administration prepared for transition, terrorist Hani Hanjour entered the country and joined his fellow operative Hazmi in San Diego. Of all the terrorists, Hanjour was perhaps the most culturally acclimated to the United States. He had lived in the United States in 1991 when he studied English in Arizona after working in Afghanistan as a relief worker in the late 1980s. Hanjour returned to the United States in 1996 after being rejected by flight schools in Saudi Arabia. He started pilot training at several U.S. schools, but never finished the course of instruction, returning to the kingdom in late 1996. Finally, in 1997, Hanjour returned to Arizona, via Florida, and completed his training. In April 1999 he earned his commercial pilot's license. He flew back to Saudi Arabia, where his

request to work in Saudi civil aviation was again denied. He found his way to Afghanistan and al Qaeda in the spring of 2000. As soon as Hanjour was identified as a pilot, he was assigned to the planes operation.[104] Once Hanjour linked up with Hazmi, the pair moved to Arizona to resume flight training. While in Arizona, Hazmi remained in phone contact with friends in San Diego.[105]

During December the remainder of the pilots earned their pilots' licenses. None had particularly distinguished themselves as exceptional students. However, by the end of the year all were simulating flights on large jets.[106]

THE BUSH ADMINISTRATION TAKES CHARGE

After eight years of being out of office, the Republicans were back. Surprisingly, the new president kept several of the Clinton team on the job. These included DCI George Tenet and, in line with customary practice, FBI director Louis Freeh. Richard Clarke and the bulk of his analysts were also retained. Keeping an NSC staffer such as Clarke, especially one who had acquired a reputation for being difficult, was highly unusual.[107] Clarke therefore construed his retention as ensuring he would still be an important actor in the formulation of national counterterror policy. He lost little time in informing other leaders he was staying on the job.[108]

President Bush himself and every key member of his team received briefings on terrorism. Clarke told President Bush that "some Americans would die from terrorism in the next four years."[109] When President Bush asked if the CIA could kill bin-Laden, George Tenet answered by saying that such an assassination would have an effect on al Qaeda, but would not end the threat. In response to another question, Tenet assured the president the CIA had all the authority it needed to carry out its counterterrorism role.[110] Sandy Berger told Condoleezza Rice that al Qaeda and bin-Laden would take up more of her time than anything else. As is the custom, the outgoing president sat and discussed key issues with the incoming chief executive. Both men have slightly different recollections of this meeting. President Clinton recalls specifically mentioning bin-Laden to President Bush. President Bush does not recall bin-Laden being discussed at all, but rather remembers President Clinton was focused on North Korea and Israel-Palestine.[111] At the end of the process Clarke felt the new administration faced a steep learning curve.[112] However, it was clear creating and maintaining successful counterterror capabilities remained on the list of presidential priorities.

KEEPING THE PRESIDENT INFORMED

In any presidential administration, as, for that matter, in any large organization, managing the dissemination of critical information to the highest levels of leadership is a vital function. In the case of the president this is especially important. Time is the chief executive's most valuable commodity and there are only so many things on which he can be personally fully briefed. Yet the country expects the president to be aware of every important threat, challenge, and opportunity facing the United States.

Significant threats to the interests of the United States are reported to the Commander in Chief every day as part of the President's Daily Briefing (PDB). The NSA, the secretary of defense, and the secretary of state are privy to this report, as is the vice president. The contents of this briefing are highly classified. The briefing is normally given by the director or assistant director of the CIA.[113] Between 20 January 2001 and 10 September 2001, more than forty individual items related to bin-Laden were briefed to the president.[114] While this number may seem significant, it is important to remember that the forty items were but a tiny fraction of all the reports given to the president in this time frame and that the items were spread out over a nearly eight-month period. After the PDB, the next most senior intelligence briefing product is the Senior Executive Intelligence Brief (SEIB). The SEIB covers the same material as does the PDB, but in less detail. The attorney general, FBI director, and Richard Clarke all received the SEIB. However, these individuals did not see internal, undisseminated information from the FBI, CIA, or NSA.[115]

NEW FACES, NEW WAYS

Of course, the new administration made changes. Procedurally, presidential briefings were less formal, but NSA Rice was almost always in attendance.[116] Unlike with the Clinton administration, not only was more information vetted through the Deputies Committee, but the Committee was expected to take on and resolve tough questions. Only those issues that could not be resolved were to be passed up to the Principals Committee.[117] Clark's Interagency Committee, which had achieved the status of a parallel Deputies Committee, was relegated back to being a mere interagency working group (IWG). Clarke saw this as a de facto demotion and was disappointed in both his reduction of status and loss of ability to influence the most senior presidential advisors.[118]

Nevertheless, Clarke lost no time in pushing his agenda. Within a few days of the inauguration, Clarke tried to get Rice and President Bush to give terrorism a very high priority and to treat al Qaeda as a first-order threat as opposed to a regional concern. Rice did not immediately put any of these recommendations into action. In fact, while much work was done on the issues Clarke had identified, the first time a principals meeting was held on al Qaeda was 4 September 2001.[119]

In January 2001, however, how to respond to the attack on the *Cole* was still a very active issue. Richard Clarke continued to press for action, as long as it was measured and well planned. Neither Secretary of Defense Rumsfeld nor his deputy, Paul Wolfowitz, appeared in favor of using cruise missile attacks as a response. However, Clarke was so insistent on this matter that he bypassed normal administrative channels and sent a memorandum directly to Vice President Dick Cheney. Clarke suggested that Cheney press the CIA to determine exactly what additional information was needed to declare al Qaeda responsible for the attack on the *Cole*.[120]

The search for answers to the *Cole* turned up a potentially vital piece of information that may have been useful in detecting the planes operation. The CIA uncovered evidence linking prospective hijacker Mihdhar to an al Qaeda leader who helped direct the *Cole* attack

and learned that Mihdhar had attended the meeting in Kuala Lumpur. However, the CIA never passed this information to the FBI. Had the FBI been aware of the connection and known that Mihdhar possessed a U.S. visa, it might have located him within the United States, where he was living under his own name.[121]

IN THE PENTAGON AND THE HOOVER BUILDING, NEW HANDS TOOK THE WHEEL

Of course, terrorism was but one topic clamoring for attention in the new administration. Within the Department of Defense, Rumsfeld was focused on transforming the armed services and "building a 21st century military." He did not press for action against al Qaeda in response to the attack on the *Cole*, feeling too much time had passed. Deputy Secretary of Defense Paul Wolfowitz agreed, describing the issue as "stale."[122] Based on actions, as distinct from rhetoric, getting up to speed on terrorism was not high on the SECDEF's actual agenda. Within the Defense department, counterterrorism was the responsibility of the assistant secretary of defense for Special Operations and Low Intensity Conflict (ASD (SOLIC)). Secretary Rumsfeld did not receive a briefing from the outgoing ASD (SOLIC) as part of the transition process. Furthermore, he did not find a replacement ASD (SOLIC) until after the 9/11 attacks.[123]

Other evidence suggests the defense secretary had other priorities. For example, even after a draft Presidential Decision Directive (PDD) directing DoD to plan military campaigns against al Qaeda and the Taliban was in circulation, Secretary Rumsfeld did not initiate any such planning until after the September attacks. In short, the Defense Department's priorities were aimed at other concerns.[124]

Like Rumsfeld, both Louis Freeh, the departing director of the FBI, and Robert Mueller, the incoming director, also did not seem to have counterterrorism on their list of organizational priorities. Neither man pushed for it. Within the Justice Department, requests to increase counterterrorism funding—with the exception of monies needed to improve the Bureau's WMD incident response capability—were denied by Attorney General John Ashcroft. He also made it clear that there would be no change in policy regarding sharing information between the FBI's and Justice Department's criminal divisions. "The wall" remained standing. Overall, there was a sense that the Justice Department wanted the FBI to get back to "investigative basics."

TIME FOR THE TALIBAN?

In March 2001, Condoleezza Rice asked the CIA to prepare a new set of authorizations for covert action in Afghanistan. The idea had originated with Richard Clarke and was linked to increasing support for the Northern Alliance. Under DCI Tenet's direction, two documents designed to give the agency maximum leeway were created. Once the documents were completed, Tenet then argued that the administration was doing things backwards. A policy review and determination should precede the authorization, he said, not vice versa.[125]

Clarke's recommendations went to a partial meeting of the Deputies Committee on 7 March 2001. Stephen Hadley, the deputy assistant national security advisor, felt the time was right for a new Presidential Decision Directive on terrorism. Clarke reacted with mixed emotions. On one hand he feared al Qaeda would be categorized as a regional threat, vice a global menace. He also lamented the time it would take the administration to review the existing counterterror policy. On the other hand, Clarke understood the review presented an opportunity to recognize the "changing nature of terrorism."[126]

THREAT WARNINGS INCREASE AND AL QAEDA'S MUSCLE TEAMS DEPLOY

The number of warnings of terrorist threats and planned attacks generated by the U.S. intelligence community rose to an all-time high in the spring of 2001.[127] On 13 April the FBI ordered its offices to assume a posture of increased alert. Al Qaeda was reported to be planning attacks, but there was no indication that these attacks would take place in the United States and no specific actions were either suggested or required by FBI headquarters.[128]

In late April, the muscle hijackers began to arrive. Each used his own name. The first two entered at Dulles airport. Each group carried an infusion of funds to keep the operation going.[129] Once in the United States, these men, like the pilots, kept a low profile. Most joined local gyms or health clubs.[130] All but one of the "muscle" men would be in the United States by 4 July 2001.

Al Qaeda was eventually placed on the agenda of the full Deputies Committee. It would take nearly two months, but when al Qaeda was discussed, there was no doubt as to how it was viewed by the country's leading intelligence agency. The CIA described al Qaeda as "the most dangerous group facing the United States."[131]

Throughout the spring of 2001 reporting on terrorism surged in general, but nothing pointed directly to al Qaeda. Almost all the reports were coming from the CIA's Counterterrorism Center, which collected information from outside the borders of the United States. The FBI, responsible for counterterrorism inside the borders, did not augment CIA reporting. Clarke, representing the NSC, continued to broadcast his increasingly familiar-sounding alarm about the threat of terrorists inside the United States, and dramatized his concerns by invoking scenarios in which Hamas, al Qaeda, or other terrorist organizations attacked the White House.[132]

White House leaders remained concerned about the possibility of an attack using WMD. In May, Vice President Cheney was assigned responsibility for managing the national response to such an attack. It took time to build a task force, and it was just beginning to function on 11 September 2001.[133]

The linkage between the attack on the *Cole* and the pending planes operation resulted in another potential opportunity for the U.S. intelligence community in June 2001. An FBI analyst chasing the flow of al Qaeda monies once again encountered the name of Mihdhar. The analyst met with a CIA counterpart on 11 June. The meeting was unproductive. The FBI agent did not pass on her information due to the bureau's concern about breaching

"the wall." The CIA analyst did not reveal what the agency knew about Mihdhar because he believed he was not authorized to share agency information with the bureau and because he wasn't specifically asked about Mihdhar. The FBI analyst didn't ask about Mihdhar because she assumed the CIA would tell her if they knew anything.[134] Despite the slow start and continued difficulty in sharing information, the two counterterrorism officials continued their efforts and made progress. By 25 August, al-Hazmi and Mihdhar were under serious suspicion of being terrorists and the CIA requested the intelligence community at large to place their names on the appropriate watch lists.[135]

At more senior levels, movement also occurred toward a decision as to what to do about al Qaeda. The first draft of a presidential directive aimed at eliminating al Qaeda went to NSA Rice on 7 June 2001. She viewed the document as a comprehensive new national strategy. Clarke saw it as essentially the same recommendations he had made in 2000.[136] Parts of the administration's efforts clearly were repetitions of what had been tried, and had failed, before. For example, the Taliban was once again approached diplomatically and asked to expel bin-Laden. There were also repeated demarches aimed at Pakistan. Neither effort was more successful than it had been in the past.[137] However, one part of the proposed plan produced fierce debate. Clarke was all for increasing U.S. support to the Northern Alliance. NSA Rice advocated a larger regional effort.[138]

THINGS SLOW DOWN—THE TOTAL POLICY REVIEW

There was a reason the Bush White House was not moving at top speed on terrorism and a great many other issues. In an effort to craft a coherent foreign and security policy, the administration was conducting a total policy review. Older hands, like Richard Clarke, felt this created unacceptable slow-downs. Key administration officials, such as Stephen Hadley, thought the Bush team was moving as fast as it could.[139]

As the Bush administration reviewed policies and, among other things, attempted to determine what to do about bin-Laden, the hijackers continued to train. While keeping low profiles, they were far from invisible. For one thing, they traveled. Given the risk to their mission if one of the men was caught, their movements were extensive. Each of the four pilots left the United States at least once during 2001. Shehi flew to Morocco and then to Egypt. Jarrah brought his German girlfriend to the United States for a ten-day stay. He visited her in Germany twice. Mission leader Atta flew to Germany and Spain, where he participated in a final preoperation conference with Khalid Sheikh Mohammed.[140] Both Atta and Shehi encountered difficulty trying to reenter the United States, as both lacked student visas. However, each was able to persuade INS inspectors to allow them to return.[141] In June Mihdhar was in Jeddah and had to apply for a new visa. Since he had not been "watchlisted," even though the CIA knew he had attended the Kuala Lumpur meeting, there was no reason for the State Department to deny his request.[142]

Others were also searching for the future hijackers. Shehi's family grew worried when they could not contact him in Germany. They consulted the UAE representative in Germany, who in turn convinced the German police to mount a search. Somehow Shehi

learned that the German authorities were looking for him and called his family to tell them he was fine and still in Hamburg.[143]

JULY 2001: A LONE VOICE FROM ARIZONA

By July, the terrorists were deep in preparations for the attack. Some of the hijackers were performing reconnaissance flights on U.S. commercial carriers. This research proved small knives and box cutters could be carried aboard planes without difficulty. As a result of these efforts, Atta determined that Boeing, rather than Airbus, aircraft would be the most appropriate for the operation. He also decided to make the attacks during the first fifteen minutes of flight. Only planes embarking on long flights would be candidates for hijacking, as they would have more fuel aboard at the time of impact, increasing the destructive effect. In order to decrease any chance of suspicion, Atta also decided to try and make the "muscle" appear as if they were rich Saudis. Language talents would also be distributed evenly among the groups.[144]

On 5 July 2001, Attorney General Ashcroft and other U.S. leaders and agencies were warned by the CIA of the threat of imminent, significant, and multiple al Qaeda attacks. None of these threats were reported to be aimed at targets inside the United States.[145] This information was not changed even after the Counterterrorism Security Group was warned of possible terrorist travel to the United States. The State Department warned the public of possible terrorist attacks on the Arabian Peninsula. The FAA followed suit and included Israel as a possible attack location.[146]

July 2001 could be labeled as the month of missed chances. Some individual staff officers, reacting to what they perceived as anomalies, attempted to alert their organizations to potentially wider threat. One effort came from Special Agent Kenneth Williams in the Phoenix FBI office. Williams grew suspicious of what he believed might be an attempt by bin-Laden to send al Qaeda students to U.S. aviation schools.[147] The phenomenon that triggered Williams's concern was described as an "inordinate numbers of individuals of investigative interest" attending civil aviation schools in Arizona. The agent did not warn of potential hijackings and was concerned about aviation students in general, not just those in pilot classes. Special Agent Williams's memo went to FBI headquarters and two agents who worked for the New York field office's international terrorism squads. The memo contained four recommendations: compile a list of civil aviation schools in the United States; establish a liaison with those schools; discuss the bin-Laden theory with the larger intelligence community; and seek authority to obtain visa information on people applying to flight school.[148] Williams's memo was not acted on and its potential importance was not recognized until after the September attacks.[149]

AUGUST: THE PRESIDENT IS WARNED AND A BRAVE CALL IS MADE IN MIAMI

The SEIB of 30 August reported that the threat posed by al Qaeda was real. Yet not all of the president's advisers agreed. Deputy Secretary of Defense Wolfowitz questioned the findings. In response, DCI Tenet was adamant that the threat was genuine.[150]

On 4 August the last of the muscle men, Mohamed al Khatani, attempted to enter the United States via Miami International Airport. His poor English, lack of funds, and antagonistic attitude raised suspicions on the part of INS agent Jose Melendez-Perez.[151] Despite cautions from coworkers that causing difficulties for Saudi nationals was not a "smart" thing to do and could even cost him his job, Melendez-Perez persisted.[152] Khatani was refused entry and did not take part in the attack.[153]

President George W. Bush received the first PDB that referred to a potential attack inside the United States on 6 August 2001. The briefing was delivered by John McLaughlin, deputy CIA director.[154] The PDB contained a section titled "Bin-Laden determined to strike in U.S." It warned bin-Laden had long wanted to conduct such an attack. Al Qaeda attacks were said to be planned for years in advance and bin-Laden would not be deterred by setbacks. The briefing also stated bin-Laden wanted to hijack U.S. aircraft.[155] There was even mention of al Qaeda surveillance of buildings in New York, and "70 full FBI field investigations related to bin-Laden" were said to be in progress in the United States.[156] However, when the associated SIEB for the 6 August PDB was produced, it contained no mention of surveillance activities in New York, or of the "70 field investigations."[157]

ALMOST A SUCCESS STORY: ZACARAIS MOUSSAOUI, THE FBI, AND FISA

It was during this period terrorist Zacarais Moussaoui was selected to train as a backup pilot. Atta made the decision. Apparently, friction between Atta and Jarrah had been steadily growing.[158] Moussaoui began simulator training in Minneapolis on 10 August. However, his desire to fly big jets without wanting a license caused his instructor to grow increasingly suspicious. Within a few days the instructor reported Moussaoui to a friend in the Minneapolis field office of the FBI.[159] The agent quickly located Moussaoui, who, like every other member of the planes operation, was living openly under his own name, and questioned him. Moussaoui's jihadist beliefs surfaced at once, as did his possession of $32,000 for which he could not satisfactorily account. During questioning Moussaoui "became agitated" when asked if he had ever traveled to nearby countries when he was in Pakistan. During this phase of the investigation, the agent learned that Moussaoui was intending to buy some GPS equipment and get martial arts training.[160] The agent rapidly concluded Moussaoui was an Islamic extremist preparing for a hijacking.[161]

The Minneapolis field office and FBI Headquarters next had to decide what to do with Moussaoui. The debate centered on whether it would be wiser to arrest Moussaoui at once or keep him under surveillance to gain more information. As it was not clear that Moussaoui could be imprisoned, the decision was made to prevent him from getting any more training that might be useful to his plans. As a French national with an expired visa Moussaoui could be expelled from the United States at once. Accordingly, on 17 August 2001 he was arrested by the INS and a deportation order was signed.[162]

The next problem facing the Minneapolis field office was what to do with Moussaoui's laptop computer. The agents in Minnesota very much wanted to search its contents but worried the U.S. Attorney's Office would find they had insufficient cause to obtain a search

warrant. FBI Headquarters believed that sufficient cause was lacking.[163] The best approach seemed to be to obtain a FISA warrant for the search, but that would require the FBI to make a convincing case that Moussaoui was an agent for a foreign power. Accordingly, assistance in this effort was requested from the FBI's legal attachés in Paris and London as well as from the CIA. The French government was contacted on 16 August. Ten days later the French authorities provided information connecting Moussaoui to an Islamic Chechen leader. The British moved more slowly as they were already dealing with a large number of terror-related inquiries and had not been given a reason to make the Moussaoui case a matter of priority.[164]

The French information sparked additional debate. The CIA, FBI headquarters, and the Minneapolis field office all argued whether Moussaoui's tie to Chechen rebels was sufficient to meet the criteria for being "an agent of a foreign power." During these discussions, the CIA referred to Moussaoui as a "possible suicide hijacker."[165] In the end, FBI headquarters said the evidence was not sufficient and a FISA application was not submitted.[166]

The Moussaoui case was not discussed within the Counterterrorism Steering Group. However, the group shared a conviction that al Qaeda had established sleeper cells in the United States. Richard Clarke claimed that the CSG had alerted all U.S. agencies, whether of an internal or international orientation. He further stated the warning said an attack was imminent.[167] But many domestic agencies did not agree with Clarke's findings and did not view the CSG's warning as a call for action. Most of these organizations lacked preestablished procedures to initiate in times of increased threat, as did the FBI, State Department, Defense Department, and CIA. There was an increased effort on the part of the domestic agencies to look for evidence of sleeper cells, and externally focused U.S. organizations increased their overseas surveillance.[168]

The FAA issued a series of briefings. However, no mention was made of the chance of suicide hijackings and no new security measures were initiated.[169] Acting Director Pickard of the FBI briefed his senior agents in charge, but only the New York office appeared to take any notice of the briefing. The acting director also briefed Attorney General Ashcroft. After two such briefings Pickard claimed Ashcroft said "he didn't want to hear any more about the threats."[170]

Atta used the month of August to firm up final details. The terrorists were now making reconnaissance flights on the exact type of aircraft that would be used in the attack. As both the White House and Congress were on the target list, Atta wanted to make sure the attack occurred when Congress was in session. By mid-month the attackers had procured their weapons. They purchased airline tickets from 25 August to 5 September, usually paying with credit cards. The groups' tradecraft continued to be lackluster as many of the attackers phoned family and friends to make last farewells.[171] In the last days before the strike, Atta and the others returned their excess funds to al Qaeda and moved to motels near their airports of departure. The planes operation had come a long way since 1996.

A casual attitude toward secrecy about the operation was also observed, to a degree, in al Qaeda's leaders. Bin-Laden's senior lieutenants knew that he was pressing hard for action.

He initially wanted the attacks to occur in May. Taliban leaders were also aware of the impending strike, and this had become something of a friction point between them and bin-Laden. Some of the Taliban leaders were uncomfortable with hitting targets in the United States, as a violent response was seen as certain. These men preferred action aimed at the Northern Alliance. Others, perhaps even Mullah Omar, the Taliban leader, wanted the attack to be made against "the Jews."[172] At least some of the information filtered past the level of senior leadership. While details of the strike were not widely known, the entire al Qaeda organization was aware that something major was afoot. [173]

THE LAST WEEK

On 4 September, the FBI sent a teletype message to the CIA, FAA, Customs, the State Department, INS, and the Secret Service summarizing the facts in the Moussaoui case. The summary did not include the local agent's belief Moussaoui had intended to hijack an airplane. It did contain a comment from the FAA that attendance in U.S. flight schools by people from the Middle East was not unusual.[174] The Minneapolis office wanted to inform the FAA about Moussaoui from the beginning of the case. However, FBI Headquarters said that the complete record could not be shared and provided the FAA with only a partial report.[175] Taking matters into his own hands, the Minneapolis Special Agent in Charge sent his agent to fully brief the local FAA office and "fill in the gaps." The FAA took no action in response to this additional information.[176]

When Washington learned that the Minneapolis SAIC had passed the full report to the FAA, friction between FBI Headquarters and the Minneapolis field office increased. Washington accused Minneapolis of trying to "get people spun up." The SAIC admitted that was precisely his intent because he was "trying to keep someone from taking a plane and crashing it into the World Trade Center." The response from FBI Headquarters was "that was not going to happen" and no one knew what Moussaoui was intending.[177]

It is clear that FBI officials in Washington and Minneapolis attached differing degrees of importance to the Moussaoui case. Local supervisors felt it was important enough to disobey headquarters when it came to sharing information. Washington thought so little of the case that it was not briefed to either the acting director of the FBI or the assistant director for counterterrorism prior to 11 September.[178] The assistant director was warned that the field office might call to complain how the case was handled. Minneapolis did initiate a complaint, but eventually decided not to "buck the system," and terminated the effort.[179]

In contrast, the CIA had not been shy about sharing information regarding Moussaoui with its chain of command. On 23 August George Tenet was given a briefing item titled "Islamic Extremist Learns to Fly." The briefing was fairly comprehensive, but there was no mention of a possible connection between Moussaoui and al Qaeda. Since Moussaoui was an FBI case, Tenet did not discuss it with anyone at the White House or the FBI. No connection was made between Moussaoui and the terrorist threats reported earlier during the summer.[180]

On 4 September 2001, the Principals Committee discussed al Qaeda for the first time. Clarke pressed Rice hard to get the other principals to take al Qaeda seriously. Clarke

warned Rice the CIA was being "passive-aggressive" and that taking a "business as usual approach" would leave the United States "waiting for the next big attack."[181] At the meeting, the principals also discussed the draft PDD on al Qaeda and the Taliban. It was believed the strategy would take three years to be effective. The Defense Department was in favor of taking strong action. The State Department joined with DoD, though Secretary Powell warned the ease of killing bin-Laden was being overestimated. Treasury Secretary O'Neill was "skittish" about killing an individual. Deputy Secretary of Defense Wolfowitz and General Myers, chairman of the Joint Chiefs of Staff, did not balk at killing bin-Laden, but wanted such action to be part of a larger operation, as the targeting of Muammar Gaddafi had been in 1986.[182]

On 9 September 2001, Ahmed Shah Massoud, the leader of the Northern Alliance, was assassinated by al Qaeda operatives. This pleased the Taliban leaders who had wanted al Qaeda to attack the opposition. Friction between the Taliban and bin-Laden diminished, and Taliban complaints about the planes operation were reduced.[183]

The assassination did not affect U.S. efforts to deal with bin-Laden and the Taliban. On 10 September, the draft PDD on Afghanistan was approved for forwarding to the president. Funding sources for the plan were still unidentified.[184] On the same day bin-Laden phoned his mother in Syria to say something big was about to happen and that it would end their communications for a long time.[185]

THE DAY ARRIVES

On the morning of 11 September 2001, Atta and his eighteen men left their motel rooms and headed for Ronald Reagan National Airport in Washington, D.C., Logan International Airport in Boston, Massachusetts, and Newark International Airport in Newark, New Jersey.[186] At this time the majority of systems and procedures aimed at protecting the United States from a terrorist attack had failed. The only measures that could then have prevented loss of American lives were under control of the FAA.

Once the hijacked aircraft were in the sky, U.S. citizens were going to die, unless, somehow, miraculously, the passengers and aircrew could recover control of the captured aircraft. But even if this was not possible, there was still, at least technically, an ability to limit the number of fatalities to only those persons aboard the four planes. Doing so would require the collaborative efforts of the FAA and North American Aerospace Defense Command (NORAD), the organizations with responsibility for the security of U.S. airspace.[187]

NORAD

The mission of NORAD, a binational Canadian–U.S. organization, is to "defend the airspace of North America and protect the continent."[188] To perform this mission, NORAD has divided its area of responsibility into three regions.[189] During the Cold War NORAD was seen as an indispensable system and likely to be the first organization to detect a strategic Soviet attack. Like many military commands, NORAD faced severe budget cuts and force reductions in the 1990s. One of the more visible changes in the wake of the Cold War

was the shift of responsibility for the NORAD mission from the active-duty Air Force to the Air National Guard.[190] The number of NORAD sites was reduced from twenty-six to seven.[191] NORAD had, in fact, only barely escaped being completely eliminated by arguing its capabilities were still required in order to protect against a potential asymmetric attack. It was believed such an attack would most likely come in the form of cruise missiles.[192]

However, NORAD also recognized that the use of manned aircraft as guided missiles was a potential problem. NORAD forces occasionally exercised against such a threat, but the suicide aircraft were always depicted as international flights entering the country. The exercise was also a test of NORAD protocols for working with the FAA. In such an event, the procedures called for "multiple levels of notification and approval at the highest levels of government."[193] The decision to destroy a commercial airliner was naturally considered of national importance and only the president could order a shoot-down.[194] These procedures had not come close to being used in reality for nearly a decade, as the last hijacking that involved both NORAD and the FAA happened in 1993.[195]

On 11 September 2001, NORAD control for the Northeast region of the United States was located in Rome, New York. Two "strip alert" F-15 Air Force fighters were stationed at Otis Air National Guard Base on Cape Cod. A second pair of "strip alert" F-15s were stationed at Langley Air Force Base in Virginia.[196] While this was the normal amount of fighter coverage, staffing in NORAD command centers was higher than usual. A simulated air war exercise, Operation Vigilant Guardian, was scheduled to begin that morning.[197]

Under FAA procedures involving hijacked aircraft, each plane is equipped with a radio "Identification Friend or Foe" (IFF) transponder that automatically reports aircraft heading, speed, and altitude. The transponder also broadcasts a unique electronic code that specifically identifies the aircraft. In the event of an emergency, such as a hijacking, the pilot of the aircraft can broadcast a variety of warning signals.[198] Once received, transponder signals are converted into electronic symbology that air traffic controllers then use to ensure safety of flight. These controllers only see the symbology, so if an IFF transponder were to be turned off, that aircraft would essentially "disappear" from the controllers' screens.[199]

Accordingly, the FAA expected the first indication of a hijacking to most likely be an emergency IFF signal. Whatever the source, the controller who first detected the hijacking would first notify his or her supervisor, who in turn would alert the FAA chain of command all the way to FAA Headquarters in Washington, D.C. There, a very senior hijack coordinator would assume control. The hijack coordinator would contact the National Military Command Center (NMCC) in the Pentagon and request a military aircraft escort to follow the hijacked aircraft. The appropriate watch officer in the NMCC would then notify the Defense Department chain of command and request permission to provide an escort. The approved request would be transmitted down the chain of command. The NMCC would then keep the FAA hijack coordinator up to date as well as directly assist regional and local FAA centers in communicating with the U.S. military. Both NORAD and the FAA would continue to track the hijacked aircraft. At no time was an actual combat intercept and shoot-down part of these standard procedures.[200]

THE ATTACK BEGINS

At 0814, 11 September 2001, a Boston-based air traffic controller ordered American Airlines Flight 11 (AA11) to climb to 35,000 feet, but the aircraft did not comply. This was Mohammed Atta's aircraft. The controller attempted to gain communications with AA11 on several alternate and emergency frequencies, but was not successful. Ten minutes later AA11's transponder was turned off and the controller reported to his supervisor that something was seriously wrong. At this time hijacking was not suspected.[201] The supervisor thought AA11 had suffered a communications failure and ordered the controller to follow "no radio aircraft" procedures. The controller then checked if American Airlines was in contact with this aircraft. Other controllers began to move their aircraft away from the suspected position of AA11, and asked pilots to look for the missing plane.[202]

Atta's unfamiliarity with the aircraft's communication control evidently led him to inadvertently announce the plane was being seized over the radio, rather than on the intercom. This occurred at 0824 and was heard by the controller, who then realized a hijacking was in process. The controller notified his supervisor, who assigned a second controller to AA11. In accordance with FAA procedures, Boston's FAA Center notified the FAA chain of command of the hijacking. This took seven minutes. Boston Center also notified the FAA Command Center in Herndon, Virginia, that AA11 was believed to be hijacked and moving toward New York airspace.[203]

The FAA Command Center alerted the FAA Operations Center to the possible hijacking and learned that the operations center was already in communication with the FAA's New England Regional Office. FAA Headquarters then initiated the hijack protocol but did not contact the NMCC to request a fighter escort.[204]

Boston FAA Center violated protocol and alerted the New England Air Defense Sector (NEADS) directly at 0837:52. The call was received by then–Technical Sergeant Jeremy Powell, whose first response was to ask if a drill was taking place.[205] Air Force Colonel Bob Marr, the NEADS commander, assumed "Battle Command," taking responsibility for any air war over North America. He immediately contacted Major General Larry Arnold, commanding both the First Air Force and the NORAD continental region, and requested permission to scramble fighters. Arnold ordered the fighters into the air and informed Marr he would "get permission later." Arnold then notified NORAD Headquarters in Colorado Springs, Colorado.[206]

THE SECOND AND THIRD AIRCRAFT ARE TAKEN

At 0842, while controllers at the FAA Center in New York were intently searching for AA11, United Airlines Flight 175 (UA175), then entering New York's airspace, reported having heard suspicious radio transmissions when departing Boston. A minute later, UA175's transponder code changed twice. This change was missed by UA175's controller, who also had responsibility for AA11.[207]

At 0846, slightly more than ten minutes after the military was first informed of a problem, the strip alert F-15s launched from Otis National Guard Base on Cape Cod. The planes lifted off the runway without contact information and no recommended course to intercept AA11. At the same time, AA11 flew into the North Tower of the World Trade Center.[208]

Between 0846 and 0850, FAA New York and NEADS learned that AA11 had crashed into the World Trade Center. At 0851 the controller for UA175 noticed the earlier changes in the plane's transponder signal and attempted to contact the aircraft without success. After two minutes UA175's controller informed another controller that communications with the airplane had been lost and UA175 was a possible hijack victim. The controller then spent the next several minutes handing off aircraft to other controllers and clearing aircraft out of the path of an unidentified contact believed to be UA175.

Halfway across the United States, American Airlines Flight 77 (AA77) began to deviate from its flight path. The deviation went unnoticed. By this time, CNN and other news networks started to broadcast reports of an aircraft hitting the World Trade Center.

In the FAA's New York Center, the controller in charge notified the FAA chain of command that UA175 was believed to be hijacked. The manager attempted to reach senior FAA managers, but was told they were discussing a hijacking and could not be disturbed. The hijacking under discussion was AA11, which had already hit the World Trade Center.[209]

INFORMING PRESIDENT BUSH

On the morning of 11 September 2001, President Bush was visiting the Emma E. Booker Elementary School in Sarasota, Florida, to promote his pending education initiatives. The president received the first report of the attacks shortly before 0855 when political adviser Karl Rove reported a small twin-engine plane had hit the World Trade Center. A few minutes later Condoleezza Rice amplified the information, explaining a "twin-engine commercial aircraft had struck the north tower of the World Trade Center." The president's initial reaction was to suppose the crash had been caused by pilot error.[210]

At 0856, AA77 disappeared from the radar at the FAA's Indianapolis Center. The controller initiated a search for the aircraft while continuing efforts to contact the plane on radio and through American Airlines. At the time the controller was unaware of any hijackings and believed AA77 had experienced an electrical or mechanical failure and might have crashed.[211]

THE SECOND TOWER IS HIT

In New York, the controller for UA175 was still unable to locate the airplane. At 0858 he told another controller there might be two hijackings in progress. A manager at New York informed the FAA Command Center of the possibility of a second hijacking and that military assistance was needed. This would be the only notification of a second hijacking either the FAA Headquarters or Command Center would receive. During the next two minutes FAA New York asked New York terminal approach control for assistance in locating UA175. Terminal approach identified what they believed to be the aircraft at an altitude of

9500 feet, heading inbound. A minute later, at 0903, UA175 flew into the south tower of the World Trade Center.[212]

During the final minutes of UA175's flight the FAA's Indianapolis Center began to notify other agencies of the possible crash of AA77. In Washington, the NMCC began notifying senior Pentagon officials and contacted the FAA Command Center for information. The trigger for these actions was the reports and pictures that were being broadcast by CNN and monitored within the NMCC.[213]

When news of the second strike reached the FAA's New England Regional Center, the reaction was to "alert the military real quick on this." Boston Center instructed all its controllers to inform every pilot with whom they were in contact of the events in New York and to increase cockpit security. Boston then requested the FAA Command Center to issue a similar warning nationwide. By 0905, New York Center had shut down its airspace to all traffic until further notice.[214] The actions in Boston and New York were taken on the authority of local leaders.

Simultaneously, at 0905, AA77 reemerged as a contact on the radar scopes of Indianapolis, heading east. However, the search for AA77 was concentrated to the south and west along the plane's original flight path. As a result the radar return was not noticed.[215]

"AMERICA IS UNDER ATTACK"

In Florida, White House Chief of Staff Andrew Card informed the president of the second strike on the World Trade Center. Card stated, "America is under attack."[216] This report was filmed by photographers covering the president's visit.

NEADS Commander Marr learned of the second attack three minutes later when, while watching CNN, he saw UA175 hit its target.[217] He immediately ordered the Otis F-15s into a holding pattern in the military airspace off Long Island. [218] The fighters remained there for fifteen minutes.

By this time, FAA Indianapolis was convinced AA77 had crashed and requested assistance from Air Force Search and Rescue, located at Langley Air Force Base, in looking for the downed aircraft.[219] The center also contacted the West Virginia State Police and asked if there had been any reports of a downed aircraft.

As the F-15s orbited off Long Island, NEADs grew concerned about their fuel state. Colonel Marr contacted Langley and asked how many fighters could be put up. The answer was three.[220] In the meantime the pilots of the F-15s were told what they already had confirmed visually; New York City and the United States were under attack.

At 0910, AA77 crossed the line that divided the airspace controlled by Indianapolis to that controlled by the FAA's Washington, D.C., center.[221] Unreported and undetected, the plane was essentially invisible. It flew on toward Washington for an additional thirty-six minutes before being redetected.

Indianapolis Center learned of the other hijackings and attacks by 0920 and began to question the assumed crash of AA77. The center's supervisor contacted the FAA Command Center. In turn, the Command Center notified other FAA Centers that AA77 was "lost."[222] Fearful of a third hijacking, the FAA Command Center, some FAA field facilities, and American Airlines intensified their searches for AA77. At 0921 the Dulles Airport terminal was asked to look for "primary targets.[223]

At 0921, for the first time, NEADS was informed of a possible third hijacking.[224] It was not clear to Colonel Marr that this aircraft was AA77. Rather he and his staff believed it was AA11, which by that time had already crashed into the World Trade Center. Marr believed AA11 was inbound toward Washington, D.C., and ordered the three fighters at Langley into the air.[225]

At 0925, the FAA Command Center warned FAA Headquarters that an aircraft might be making a suicide run at Washington. FAA Headquarters then took an unprecedented step and ordered a "nationwide ground stop," effectively canceling every scheduled commercial takeoff in the United States.[226]

Senior personnel in a variety of Washington organizations were becoming increasingly involved in efforts to respond to the attacks. The White House, OSD, and FAA all initiated teleconferences. However, there was no coordination between these efforts.[227] Richard Clarke ran the White House conference from the Situation Room. In virtual attendance were representatives from the FBI, Justice Department, and OSD.[228]

United Airlines Flight 93 (UA93) departed Newark at 0842. At 0927, the aircraft acknowledged a routine transmission from FAA Cleveland Center. This was the last normal contact with UA93. A few minutes later Cleveland Center heard the sounds of a struggle and screaming.[229] During this period Cleveland air controllers noted UA93 descended 700 feet.

The NMCC began a "significant event" conference. The meeting began with a recap of known information. Two aircraft had struck the World Trade Center. AA11 was confirmed hijacked and F-15 fighters from Otis had been scrambled.[230] The FAA had been asked to provide information, but no FAA representative was then present. At 0930, based on reports on an aircraft inbound to Washington, the NMCC changed the conference to an "air threat conference call."[231]

Also at 0930, in response to a question from Cleveland Center, other aircraft confirmed they had also heard sounds of struggle on the radio. UA93 was no longer answering calls. At 0932, Cleveland heard the hijackers order passengers to stay calm, claiming a bomb was on board.[232]

IN WASHINGTON, AIR THREAT INBOUND

Dulles terminal control reported the detection of a primary radar contact tracking east at high speed. Dulles Tower notified Reagan Tower of the contact. Both Reagan and Dulles also notified the Secret Service.[233] Reagan took the additional step of vectoring an Air National Guard C-130, which had just taken off for Minneapolis, to intercept, identify, and

follow the target. The C-130 successfully spotted the target, correctly identified it as a Boeing 757, and attempted to follow the airliner.[234]

At 0933 the Reagan Tower supervisor contacted the Secret Service via a "hot line" and reported an aircraft heading directly toward the White House and that there was no communication with the plane.[235] It was at this time FAA Headquarters learned UA93 had also been hijacked. A set of frequent updates on UA93 began to flow to Acting Deputy FAA Administrator Monte Belger and other senior FAA officials.[236] In Cleveland, FAA controllers reported they were tracking UA93 and requested military fighters intercept the plane and escort it to a military base. They were informed FAA Headquarters was taking the request for action.[237]

Multiple actions occurred at 0934. In the NMCC the air threat conference call ended. The president, whom the Secret Service was desperate to get to a safe location, boarded Air Force One in Florida. Reagan Airport reported to the Secret Service that the air contact had turned south toward the airport.[238] The Secret Service decided to evacuate the vice president from the White House.

At 0936, FAA Boston called NEADS and reported an unidentified aircraft was six miles south of the White House. NEADS ordered the Langley fighters, which were over the ocean, to fly toward the White House at full speed.[239] A minute later, the air threat conference was resumed. This time the conference would last for eight hours. During the first hour of the conference, no information was passed to the NMCC and no person involved in managing the crisis participated. In the White House, the vice president entered the tunnel leading to the White House bunker.[240]

THE PENTAGON IS STRUCK, THE BATTLE ENDS

AA77 flew into the Pentagon at 0937:47, when the Langley fighters were still 150 miles away. At 0938 the C-130, still attempting to trail the Boeing jet, reported it had crashed into the Pentagon. Controllers at NEADs detected AA77 at the last minute but lost contact as the aircraft impacted the Pentagon.[241]

The NMCC contacted NORAD at 0939 and reported "the United States might be under air attack" and requested an update.[242] NORAD, which had never received a single report concerning AA77, could only answer "there were conflicting reports." NORAD did inform the NMCC that one of those reports indicated there was a possibility a hijacked aircraft from Kennedy Airport might be en route to Washington, D.C. The NMCC replied the plane in question had just crashed into the Pentagon.[243]

At 0941 UA93 turned off its transponder. However, numerous radars were tracking the plane as a primary contact. A minute later the FAA Command Center learned that an aircraft had struck the Pentagon. Ben Sliney, the FAA Command Center National Operations Manager, acted on his own and ordered all airborne commercial aircraft to land at once.[244]

President Bush was airborne in Air Force One. Vice President Cheney was in the White House bunker. Both men were in contact with each other by 0945. The president was

already aware of the strike on the Pentagon and told the vice president, "We're at war . . . somebody is going to pay."[245]

UA93 continued on a track toward Washington, D.C., for another eighteen minutes. During that time, the FAA Command Center noted military assistance with the aircraft might be required. Mrs. Cheney was located by the Secret Service and joined her husband in the White House bunker. Onboard UA93, a group of passengers, who now understood hijacking paradigms had changed and that they were facing certain death, made a desperate and courageous effort to wrest control of the aircraft back from the hijackers. Other aircraft saw UA93 flying erratically during what is now believed to be the passengers' counterattack.[246] UA93 crashed at 1003:11.

Although confused and incorrect reporting would continue for most of the day, the first battle in the Global War on Terror was over. The attackers had successfully used 75 percent of their weapons and created the greatest number of casualties on U.S. soil since the Civil War. The attack lasted less than two hours.

Notes

1. Bob Graham and Jeff Nussbaum, *Intelligence Matters: the CIA, the FBI, Saudi Arabia, and the Failure of America's War on Terror* (New York: Random House, 2004), 15.
2. "Bin-Laden" was chosen as the appropriate spelling as it is the most commonly used. There are other spellings in use, most notably "bin-Ladin," which was used by the 9/11 Commission. Al Qaeda is usually translated to mean "the base."
3. Thomas Kean, Lee H. Hamilton, et al., *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks upon the United States* (Washington, D.C.: Government Printing Office, 2005), 48. Henceforth referred to as *The 9/11 Report*.
4. Ibid., 50–52.
5. Ibid., 58.
6. Ibid., 60.
7. Ibid., 59.
8. Ibid., 60.
9. Ibid., 153.
10. Ibid.
11. Ibid., 57–58.
12. Ibid., 59.
13. Ibid., 154.
14. Ibid., 47–48.
15. Ibid., 49.
16. Ibid., 149.
17. Ibid., 157.
18. Ibid., 99.
19. Ibid., 92.
20. Ibid., 95.
21. Ibid.
22. Ibid., 71–72.
23. It should be noted that the arrest of Timothy McVeigh, while rapid, was the result of coincidence rather than design, when an alert Oklahoma highway patrolman stopped the bomber for a broken taillight.
24. *The 9/11 Report*, 74.
25. Ibid., 75.
26. Ibid., 75–77.
27. Ibid., 78.
28. Ibid., 78–79.
29. Ibid., 90.
30. Ibid., 91.
31. Ibid., 91–92.
32. Graham and Nussbaum, *Intelligence Matters*, 36.
33. *The 9/11 Report*, 81.
34. Ibid., 80–82.
35. Ibid., 83.
36. Ibid.
37. Ibid., 83–84.

38. Ibid., 84.
39. Ibid., 85.
40. Ibid., 86.
41. Graham and Nussbaum, *Intelligence Matters*, 103–104.
42. *The 9/11 Report*, 104.
43. Ibid., 184.
44. Ibid., 186.
45. Ibid., 157.
46. Ibid., 155.
47. Ibid., 185.
48. Tommy Franks, *American Soldier* (New York: HarperCollins, 2004), 209.
49. *The 9/11 Report*, 157.
50. Ibid., 159.
51. Ibid., 176.
52. Ibid.
53. Ibid.
54. Ibid., 178–179.
55. Ibid., 179.
56. Ibid., 180.
57. Ibid.
58. Graham and Nussbaum, *Intelligence Matters*, 5.
59. *The 9/11 Report*, 180.
60. Graham and Nussbaum, *Intelligence Matters*, 12–13; *The 9/11 Report*, 6.
61. Graham and Nussbaum, *Intelligence Matters*, 17.
62. Ibid., 6.
63. Ibid., 8.
64. *The 9/11 Report*, 191.
65. Hazmi and Mihdhar.
66. Graham and Nussbaum, *Intelligence Matters*, 12–13.
67. *The 9/11 Report*, 159.
68. Ibid., 160.
69. Ibid., 168.
70. Ibid., 168–169.
71. Ibid., 169.
72. Ibid., 181.
73. Ibid., 181–182.
74. Ibid., 214.
75. Graham and Nussbaum, *Intelligence Matters*, 216.
76. Ibid., 37.
77. *The 9/11 Report*, 182.
78. Ibid., 183.
79. Ibid., 186–187.
80. Ibid., 187.
81. Ibid.
82. Ibid., 188.
83. Ibid., 225.
84. Ibid., 184.
85. Ibid.
86. Ibid.
87. Ibid., 235–237.
88. Ibid., 191.
89. Ibid.
90. Ibid., 192–193. However, evidence of bin-Laden's direct involvement was not uncovered until 2002.
91. Ibid., 191.
92. Ibid., 193.
93. Ibid.
94. Ibid.
95. Ibid., 194.
96. Ibid.
97. Ibid., 195.
98. Ibid.
99. Ibid.
100. Ibid., 196.
101. Ibid., 196–197.
102. Ibid.
103. Ibid.
104. Ibid., 226–227.
105. Ibid., 220–223.
106. Ibid., 227.
107. Ibid., 198.
108. Franks, *American Soldier*, 226–227.
109. *The 9/11 Report*, 198.
110. Ibid., 199.
111. Ibid.
112. Ibid.
113. As of the writing of this case this briefing is now the responsibility of the Director of National Intelligence.

114. *The 9/11 Report*, 254.
115. Ibid.
116. Ibid., 200–201.
117. Unlike the initial term of the Clinton administration, George Bush brought in a highly experienced team. The vice president, Secretary of State, and Secretary of Defense had all been key members of presidential decision-making circles before.
118. *The 9/11 Report*, 199–200.
119. Ibid., 201.
120. Ibid., 202.
121. Ibid., 266–267.
122. Ibid., 202.
123. Ibid., 209.
124. Ibid., 208–210.
125. Ibid., 210.
126. Ibid., 203.
127. To date there has been no explanation of why the rise occurred or exactly which intelligence networks, U.S. or allied, produced the majority of the warnings.
128. *The 9/11 Report*, 258.
129. Ibid., 237.
130. Ibid.
131. Ibid., 203.
132. Ibid., 204.
133. Ibid.
134. Ibid., 268–269.
135. Graham and Nussbaum, *Intelligence Matters*, 74.
136. *The 9/11 Report*, 205.
137. Ibid.
138. Ibid.
139. Ibid.
140. Ibid., 227, 244.
141. Ibid., 227.
142. Graham and Nussbaum, *Intelligence Matters*, 33.
143. *The 9/11 Report*, 227.
144. Ibid., 245.
145. Ibid., 258–259.
146. Ibid., 259.
147. Graham and Nussbaum, *Intelligence Matters*, 42.
148. *The 9/11 Report*, 272.
149. Ibid.
150. Ibid., 259–260.
151. Graham and Nussbaum, *Intelligence Matters*, 76.
152. Ibid.
153. *The 9/11 Report*, 248.
154. Graham and Nussbaum, *Intelligence Matters*, 81.
155. *The 9/11 Report*, 261–262.
156. Graham and Nussbaum, *Intelligence Matters*, 74.
157. Ibid. Subsequently the number of FBI field investigations was found to be inflated.
158. *The 9/11 Report*, 246.
159. Ibid., 273.
160. Ibid.
161. Ibid.
162. Ibid.
163. Ibid.
164. Ibid., 274.
165. Ibid.
166. Ibid.
167. Ibid., 265.
168. Ibid., 262–264.
169. Ibid., 265.
170. Ibid.
171. Ibid., 249–250.
172. Ibid., 251.
173. Ibid.
174. Ibid., 274.
175. Ibid., 275.
176. Ibid.
177. Ibid. The supervisor in question swears he had no special knowledge or premonition of an attack on the World Trade Center. He states he was simply looking for a dramatic example to make his point.
178. Richard Mueller, the new director of the FBI, assumed his duties approximately one week before the strikes occurred.
179. *The 9/11 Report*.
180. Ibid. Following the attack of 11 September the British provided information that revealed Moussaoui had received terrorist

training in an al Qaeda camp in Afghanistan.

181. *The 9/11 Report*, 212–213.
182. Ibid., 214.
183. Ibid., 251.
184. Ibid., 214
185. Graham and Nussbaum, *Intelligence Matters*, 79.
186. Following the attack, the name of Newark International Airport was changed to Liberty International Airport.
187. *The 9/11 Report*, 14.
188. Ibid., 15.
189. Leslie Filson, *Air War Over America: Sept. 11 Alters Face of Air Defense Mission* (Tyndall, Fla.: Headquarters, First Air Force, 2003), VI.
190. Benjamin S. Lambeth, *Air Power Against Terror: America's Conduct of Operation Enduring Freedom* (Santa Monica: RAND National Defense Research Institute, 2005), 18.
191. *The 9/11 Report*, 15–16.
192. Ibid., 16.
193. Ibid.
194. Ibid., 16–17.
195. Ibid., 14.
196. Ibid., 16.
197. Filson, *Air War Over America*, 55.
198. For example, the transponder code for a hijacked aircraft is a flashing "7500."
199. In the past, if an air traffic controller lost the symbol marking the position of an aircraft, it was possible to "switch displays" to see the actual radar signal. This signal was referred to as a "primary target." Today, there are relatively few air traffic control systems with this capability.
200. *The 9/11 Report*, 17.
201. Ibid., 18.
202. Ibid.
203. Ibid.
204. Ibid., 19.
205. Filson, *Air War Over America*, 50.
206. *The 9/11 Report*, 19.
207. Ibid., 19–20.
208. Ibid., 20.
209. Ibid., 22.
210. Ibid.
211. Ibid., 22–23.
212. Ibid., 23.
213. Ibid., 22.
214. Ibid., 23.
215. Ibid.
216. Ibid.
217. Filson, *Air War Over America*, 59.
218. Ibid.
219. *The 9/11 Report*, 25.
220. Filson, *Air War Over America*, 60–63.
221. *The 9/11 Report*, 25.
222. Ibid.
223. Ibid., 26.
224. Ibid.
225. Filson, *Air War Over America*, 63–65.
226. *The 9/11 Report*, 24.
227. Ibid., 36.
228. Ibid.
229. Ibid., 37.
230. Ibid.
231. Ibid.
232. Ibid., 25.
233. Ibid.
234. Ibid.
235. Ibid.
236. Ibid., 29.
237. Ibid., 28–29.
238. Ibid., 37.
239. Filson, *Air War Over America*, 65.
240. *The 9/11 Report*, 37.
241. Ibid., 27.
242. Ibid.
243. Ibid., 36.
244. Ibid., 37–38.
245. Ibid., 39.
246. Ibid., 30.

Kosovo

ANDREW L. STIGLER

Commander Neil McCauley had hardly arrived at his office when the phone rang. It was General Fogarty's aide, informing McCauley that the general was asking for him and could McCauley stop by at his earliest convenience. McCauley promptly left his Pentagon cube and headed for the E-ring. He had recently been assigned to the Joint Staff, and was still getting the swing of things. This was his first time in with his new boss.

On arrival, the general's executive assistant (EA) sent him in. They exchanged a few brisk pleasantries, and then the general got to the point. "Commander, we've been called on by the secretary to assist with some research on coercive strategies. I hear it's got something to do with NSC preparations for a possible approach to North Korea.

"To be specific," the general continued, "I need you to take a look at two of the key decisions involved in Operation Allied Force. Specifically, examine the initial decision to use force, and subsequently how the Clinton administration approached the question of whether or not to escalate to a ground operation. This second part is likely to be tougher to pin down. I'm told that you should look at the case broadly, as whatever you come up with may be used in planning for other scenarios as well.

"Pay close attention to how the political heavyweights affected the process. I want to know who took what side. We need to try to understand their perspectives and influence even if we only have access to incomplete information. I've arranged three people for you to interview who should be able to help you out, two at DoD and one at State. Good luck." The general handed McCauley a folder with contact info and background material.

McCauley left and returned to his office. The first name on the general's list was Robert Fuller, a former foreign service officer with the Political-Military Affairs Bureau of the Clinton State Department. Fuller was now working as the assistant deputy to the Chief of Staff at State. McCauley had assumed that it would be fruitless to try to get ahold of him in short order, and was surprised when Fuller told McCauley he could open up some time toward the end of that afternoon. At 1730, McCauley found himself being ushered into Fuller's slightly cramped but well-appointed office at Foggy Bottom. Fuller wasted no time.

Note: In order to better illustrate the role of staff and advisors for students, a fictional scenario was created—a request for an "after-action report" on Kosovo, in keeping with what was a long-standing practice at the Naval War College. The policy facts of the case are real, as are the main policy makers. However, Neil McCauley, General Fogarty, Robert Fuller, Vincent Hanna, and Mark Gable are fictional, composite characters.

"Everyone had known long before March 1999 that Kosovo was a potential flashpoint. As a province of Yugoslavia, it had been granted semiautonomous status for much of the Cold War. But as in so many other parts of Eastern Europe, the end of the Cold War seriously unsettled things. In 1989, Kosovo 'teetered on the edge of secession and open revolt.'[1] There were op-eds appearing as early as 1993 warning of the possibility of instability spreading to Kosovo.[2] It was hard to be proactive, though, when there were so many other matters in the Balkans that needed our attention.

"The main Kosovar resistance organization, the Kosovo Liberation Army [KLA], emerged in 1996 when it conducted a series of bombings in the province.[3] Yugoslav President Slobodan Milosevic decided to crack down on the KLA in early 1998, and things started to heat up. At that time, the CIA predicted a major crackdown was in the offing. On February 28, 1998, two dozen ethnic Albanians were killed in Central Kosovo.[4] A U.S. reaction of some kind was needed.

"Secretary Albright was in the lead on this one. She made a number of strong statements, remarking at one time that 'History is watching us. In this very room our predecessors delayed as Bosnia burned, and history will not be kind to us if we do the same.'[5] Some people have called this 'Albright's War.' There's a fair amount of substance to the argument that she was a major factor in the policy decision, but it's worth exploring why for a minute. It's often believed that those of us in State didn't have much say in determining when the United States will employ military force, at least compared to individuals with Defense Department responsibilities. There were, however, some unusual elements to the Kosovo situation that may have given Albright additional influence.

"First off, State was in the unusual situation of *promoting* the use of military force. If the diplomats believe that concrete military threats are necessary in a situation, that means they don't expect diplomacy alone to work—a position that does not bode well for purely diplomatic options. It's similar to having the DoD tell you that military force will not get you what you want—politicians pay attention when those in charge of a particular national security tool say that their tool alone cannot do the job.

"Second, there were reasons to believe that Milosevic would have little interest in continuing his actions against the Kosovars in the face of a unified NATO. The KLA was a major nuisance to Belgrade, but not a real threat. Remember, Richard Holbrooke's book had just come out in 1998,[6] arguing that it was NATO airstrikes that convinced Milosevic to sign the Dayton Accords back in November of 1995. Dayton, in turn, had led to a fairly stable political arrangement between Bosnian Serbs, Croats, and Muslims. General Clark was of a similar mind, later writing that 'the NATO limited strikes [had] worked so well in Bosnia in August 1995.'[7] You mentioned you're talking to LTC Vincent Hanna?"

"He's next on my list, yes," McCauley said.

"I'll let him cover the choice of military strategy," Fuller continued. "We've probably got different perspectives, but you should certainly get his cut on it. Suffice it to say that there were reasons to hope that air power would work. And, ultimately, very little reason to

believe it would make the situation worse. But Milosevic responded in ways that made no sense, and only worsened his situation. He should have recognized that escalating against the Kosovar Albanians would not serve him well in the long run, because it would force NATO to insist that the situation be reversed.[8] Even if air power was not guaranteed to get us everything, there was little reason to believe that it would lead to such a deterioration of the situation.

"It's also worth considering Clinton's relationship to the military. His effort to allow gays to serve openly, one that he had pursued early in his first administration, started the relationship off on a pretty bad foot. His lack of a military record, and the fact that he was replacing a president who had both fought in World War II and won the 1991 Gulf War, didn't help either. As a reporter put it toward the close of his presidency, Clinton's own foreign policy advisors conceded that he was 'a president unwilling to exercise full authority over military commanders.'[9]

"In early 1998, there was little indication that the highest reaches of U.S. government (aside from the State Department) were inclined to seriously contemplate that use of force in Kosovo. As long as things were fairly quiet, Kosovo was off the 'to-do' list. Albright's own memoirs offer an example of the resistance that the State Department met in its early suggestions that Clinton take a hard-line approach. As National Security Advisor Samuel 'Sandy' Berger put it in April 1998, 'It's irresponsible to keep making threatening statements outside of some coherent plan. The way you people at the State Department talk about bombing, you sound like lunatics.'[10]

"American special envoy Richard Holbrooke had been sent to the region in May 1998 to try to convince the Serbs to back off and to foster discussions between the Kosovars and Serbs. Progress was limited; it proved extremely difficult to even get an agreement between the KLA and other Albanian leaders as to who would be on their negotiating team. Holbrooke, like Albright, thought that military action could be necessary to resolve the situation. It seemed that diplomacy was not likely to save the day.

"The situation in Kosovo continued to deteriorate, though not dramatically. Regardless, the Europeans felt that they had been too slow to involve NATO in previous Balkan crises, and were resolved to get some sort of military threat on the table sooner rather than later. In June 1998, they undertook an air exercise and a series of preparations for military action. Many people, including the chairman of the NATO Military Committee, General Klaus Naumann, felt that Milosevic came to the conclusion that NATO was only bluffing.[11] And numerous Western officials thought that Milosevic was right on that score.

"Then, in July 1998, the KLA made the mistake of launching an offensive, a limited operation that Albright called 'a disaster.'[12] The Serbs went after the Kosovars again—hard. By late August, about one hundred thousand Kosovars had been forced to flee their homes, and many of Kosovo's villages had been turned into ghost towns. On September 23, the UN passed Resolution 1199, stipulating the Serb government should end its brutal treatment of the Kosovars, let them return to their homes, and enter into meaningful dialogue to try to end the crisis. The

resolution had no teeth, but this was because no one had tried to give it any—it was assumed that the Russians wouldn't let a resolution authorizing force to go forward.

"There was a massacre at Gornji Obrinje on September 29, 1998. This was a particularly nasty event, involving the murder of twenty-one women, children, and elderly citizens, including a seven-month pregnant woman whose belly was slit open. The international media did an effective job of publicizing the massacre. Berger found this event particularly appalling, and called it a breach of the 'atrocities threshold.'[13] He was now leaning more in favor of a forceful response."

"Why didn't we take action then and there?" Neil asked.

Fuller smiled. "It's worth keeping in mind how difficult it is to determine when it's appropriate to use force in these situations. These things unfold gradually, and you can't really say 'Five more atrocities and I'm going to do something.' That takes matters out of your hands, and commits you to action at a time you cannot control. Politicians aren't keen to make such commitments. And there are disadvantages to publicizing your 'atrocity threshold' even if you have one, since that just gives the bad guys an incentive to do everything just short of the line you've drawn in the sand. As a result, any decision to act is going to look arbitrary in retrospect. This is one of the things that makes military action in defense of human rights both hard to justify and hard to get rolling.

"On October 8, Albright and Holbrooke met with Alliance representatives and generally agreed that the threat of force would be necessary. Now the European members of the Contact Group, members such as France and Germany who had been leery of pressing the Russians on the issue, were willing to put serious diplomatic heat on Russian Foreign Minister Igor Ivanov.[14]

"But even this attempt to convince the Russians to support a UN Security Council resolution failed. As a result, the enlarged circle of Europeans who supported action understood that such action would have to be taken outside of the UN. Clinton became willing to make more concrete threats, and sent special envoy Richard Holbrooke back to talk to Milosevic. Holbrooke had met with Milosevic a number of times in previous years, and the two men had established a working relationship. Holbrooke could make no headway, however, at one point reporting to Albright that 'This guy is not taking us seriously.'[15] Only when NATO publicly issued activation orders for airstrikes (which would be executed only after ninety-six hours had passed) did Milosevic come around and agree to let two thousand European monitors in to guarantee Yugoslavia's compliance with UN resolutions regarding Kosovo. It seemed as if a serious but not imminent risk of military action had gotten Milosevic to change his position. But any appearance that NATO had decided that the situation merited the use of force is deceptive; Holbrooke convinced his fellow NATO members to approve the activation orders [ACTORD] only by assuring them that such a move would get Milosevic to change his mind.

"The monitoring agreement was flawed, however. It wasn't clear exactly what the European monitors were supposed to verify. Did Kosovo need to be perfectly quiet, or just

something close? If atrocities occurred, would the monitors investigate? Additionally, there was no NATO force on the ground to make it clear what the repercussions would be if the Serbs violated the agreement. The fragile truce that Holbrooke had brokered gradually deteriorated, and by December 24 the Serbs were sufficiently emboldened to launch a major new offensive. As William Walker, the American diplomat in charge of the monitoring mission put it, 'If the two sides are unwilling to live up to their agreements, 2,000, 3,000 or 4,000 unarmed verifiers cannot frustrate their attempts to go after each other.'[16]

"Worse was to come. On January 15, Serb soldiers attacked the Kosovar village of Racak, slaughtering at least forty-five people. U.S. Ambassador William Walker called the scene an 'unspeakable atrocity' and 'a crime against humanity.'[17] This was enough to put some momentum behind the effort to make a serious threat of American force. Though some of the NSC principals—most notably Secretary of Defense William Cohen and CJCS Hugh Shelton—still wanted to avoid escalation, it was clear that the current arrangement in Kosovo was gradually falling apart. The timing of the Yugoslav attack was especially poor—Racak was discovered just hours after a meeting of the NSC principals, a meeting in which Defense Department officials had expressed optimism that the situation in Kosovo would improve.

"Albright and her chief aides at the State Department spent the next few days developing a strategy for delivering a final ultimatum to Milosevic and, if this was not successful, executing NATO's standing orders to commence a phased air campaign. With Berger's change of heart and the lack of a viable policy alternative from those who were still opposed to the use of force, the way had been cleared for generating a serious threat to use military force. On January 19, Albright convinced the rest of the NSC that it was time to commit the United States to a serious NATO air campaign if Milosevic did not amend his ways.

"Then another piece fell partway into place. On a trip to Moscow, Albright took in a production of *La Traviata* with Foreign Minister Ivanov. During an intermission, Albright brought up Kosovo. She pointed out that the United States and Russia would be unable to cooperate on a 'whole range of issues' if the situation in Kosovo were not resolved. 'We can't let this happen,' Albright said. Ivanov listened to Albright's arguments, and then replied that 'Russia will never agree to air strikes against the Serbs.' All the same, Ivanov said, Russia 'share[s] your desire for a political settlement, and perhaps the threat of force is needed to achieve that. I do not see why we cannot try to work together.'[18]

"This admittedly vague Russian endorsement of NATO's position was used to convince the Serbs to agree to peace talks that were held the next month. Negotiations were opened on February 6 at Rombouillet in France, and after a number of obstacles were surmounted, the Kosovar Albanians signed the proposed settlement. This settlement allowed for a three-year interim period, during which hostilities would be ended and Kosovo would be allowed considerable latitude for self-government. After the Kosovar delegation signed, the Serbs declined to give their approval. There's much more that could be said about Rambouillet, but that's most of what you need to know. It was essentially the outcome that had been expected.

"There is one other element that bears mentioning, since it touches on the other focus of your investigation—the role played by NATO's ground threat. Some individuals, most notably the Balkan expert Tim Judah, have suggested that the Serbian delegation was not prepared to negotiate at Rambouillet. Judah reports that the Serbs adamantly opposed *any* foreign forces in Kosovo, and that NATO's demands in Kosovo 'could certainly have been whittled down significantly' if the Serbs had adopted a more flexible diplomatic approach.[19]

"To my mind, this could be important, because it gives us some insight into what led to Milosevic's decision to give in. Some people say that the offer the Serbs accepted on June 10 was substantially different from the one they had been offered at Rambouillet, and that this was a major reason for the Serbs' decision to concede. If so, this would undercut the role played by both the air campaign and the ground threat, since it would mean that NATO altered its demands to a limited extent. But even if the final treaty that ended the conflict was significantly different from what was negotiated at Rambouillet, it's hard to say that the Serbs were fighting the war for those changes.[20] If they had been, why didn't they try harder to achieve their aims at the negotiating table?

"It was becoming clear to everyone involved that diplomacy was all but exhausted. At a foreign policy meeting on March 19, President Clinton summed up his perspective.

> Look, let's remember the purpose of using force to stop Milosevic-style thuggery once and for all. There's no guarantee it will succeed, but the alternatives are worse. If we don't respond now, we'll have to respond later, perhaps in Macedonia, maybe in Bosnia. Milosevic has picked this fight. We can't allow him to win. . . . In dealing with aggressors in the Balkans, hesitation is a license to kill.[21]

"Richard Holbrooke led a group to Belgrade in a final effort to get Milosevic to change his mind, but this failed on March 23. NATO commenced bombing on the following day."

McCauley then arranged a telephone interview with COL Vincent Hanna (USMC). Neil placed the call late that evening, in order to catch Hanna at a reasonable hour. Hanna had been a NATO military aide in Brussels during the war, and was now the G-5 (responsible for developing and updating plans) for III MEF in Okinawa. "I can certainly give you my personal perspective on the United States' negotiating strategy and the threat of air strikes," Hanna said after McCauley had introduced himself. "Ultimately, it was a strategy that relied on coercive diplomacy. This is not always a bad thing in and of itself. But there are serious risks involved in coercive strategies such as these. Such strategies depend on defeating the enemy's willingness to resist, and it is very difficult to gauge in advance what the enemy's tolerance for pain will be. From my perspective, any number of actors involved in the planning of NATO's strategy could have made more of an effort to recognize its potential shortcomings.

"It's important to consider how the political environment shaped the strategic thinking. Almost everyone involved recognized that it would be impossible to get NATO to agree on the use of ground forces in advance; introducing that topic at the outset could have scared the more reluctant allies, with the effect of taking all military options off the table entirely. Clark clearly perceived this danger.

"And keep in mind, the less-than-warm relationship between Clinton and the military could have had two effects. It could have made the Clinton administration less likely to confront the Joint Chiefs, since Clinton knew he had little leverage to change their minds. But it could also mean that the Chiefs had less influence on policy decisions, since the administration knows the military doesn't completely trust the president's leadership. Bad relations between branches of government can cut in one of two ways—you can become either less likely to disagree with the other agency, or more likely to ignore it.

"GEN Clark recognized that the air campaign could lead to a debacle. It's worth considering his words on the situation:

> In Clausewitz's *On War*, there is a crucial passage in which Clausewitz writes that 'No one in his right mind would, or ought to, begin a war if he didn't know how to finish it.' . . . But in practice, this proved to be an unreasonable standard. In dealing with complex military-diplomatic situations, the assertion of power itself changed the options. And trying to think through the problem to its conclusions in military terms always drove one to 'worst-case' analysis. Had we done this in Bosnia, we could well have talked ourselves out of participating in any agreement. No doubt, I thought, someone could easily imagine the situation in Kosovo turning into a military quagmire like Vietnam—all one had to do was assume the worst at every step along the way. While it was well to see the risks, some of the risks would have to be discounted by common sense. Others would have to be faced if they become more likely.[22]

"Clark had a point. If you focus on worst-case planning, you can talk yourself out of anything except the use of decisive force. Limited uses of force have their virtues, and are even necessary in some situations. The effort to find Osama bin Laden is such an example of limited force; it is limited because the political environment in which the operation is taking place (the border region shared by Afghanistan and Pakistan) is not amenable to an all-out U.S. military operation.

"Basically, people were optimistic that air power alone could do the job. A number of high-level U.S. officials believed that there was a less than 25 percent chance that Milosevic would be able to withstand a short bombing campaign.[23] It's been publicly revealed that President Clinton, Berger, and Albright were optimistic about the effect of a brief but sustained bombing campaign.[24] Albright believed that Milosevic would cave, and that threats of action were necessary because Milosevic 'only understands the language of force.'[25] When you think of the military power at the command of NATO, it wasn't hard to see why Clinton thought that the Serbs would change their mind.

"There were a number of bad signs, however. Diplomats who dealt with Milosevic near the end of negotiations described him as having a 'bunker mentality.' Apparently his advisors had told him that it would be possible to finish off the KLA once and for all if the Yugoslav army put forth a maximum effort, and that this could be done in several days.[26] In this scenario, the start of bombing was a signal to the Serbs to ramp up their military operations, instead of warning them to scale back as the Allies had hoped.

"Ultimately, however, after seventy-eight days of bombing and the threat of escalating to a ground war, Milosevic capitulated. The Russians decided that things were getting unpleasant, and in early June they told Milosevic that they could no longer support him. You may have reservations about NATO's strategy, but it was ultimately successful at very low cost, even if it wasn't pretty to watch."

The next morning, McCauley went to talk to LTC (ret.) Mark Gable. Gable had served in Political-Military Affairs at State at the time, and was now retired and living in Alexandria. General Fogarty had said that Gable was considered a bit of an expert on the ground threat, and could offer McCauley both sides of the issue.

"General Fogarty tells me you've gotten the background on how the war played out," Gable said. McCauley nodded, and Gable continued. "I've always been interested in the role of the ground threat myself, since it raises an important issue—had Clinton decided to move up to a ground war?

"From the start, Clinton thought that the U.S. public wouldn't tolerate a ground war in Europe, at least not over these stakes. Cohen summed it up in testimony to Congress during the air campaign. As he explained:

> At the time [during diplomatic efforts to resolve the crisis], you may recall there was a great disconnect up here on Capitol Hill. If I had come to you at that time and requested authorization to put a ground force in—U.S., unilaterally, acting alone—I can imagine the nature of the questions I would have received. You'd say 'Well, No. 1, where are our allies? And No. 2, who's going to appropriate the money? No. 3, how long do you intend to be there? How many? How long? How much? And what's the exit strategy?' . . . And that would have been the extent of the debate and probably would have received an overwhelming rejection from the committee.[27]

"As the air campaign unfolded, it wasn't hard to see why both NATO and administration officials were reluctant to issue open threats.

"By most accounts, the idea of a ground war received considerably more resistance from the senior commanders than had the initial decision to start the air campaign. It's one thing for the Department of Defense to acquiesce to a limited use of air power; a ground war in Europe, however, is another matter entirely. Clark was in favor of generating a sincere

ground threat, and he believed that is was one of the reasons we won the war.[28] Certainly many well-informed analysts of national security affairs felt that NATO had waded in pretty far after dropping bombs for over two months, and if it took a ground campaign to win the war, then that was the way it would have to go. The future of NATO was on the line, and alliances like NATO don't grow on trees."

"What was Secretary Cohen's position?" Neil asked.

"Cohen apparently thought an invasion was a bad idea," Gable replied. "After the war, he gave an interview in which he discussed why he was not eager to mount a ground campaign.

> It became clear to me that [a ground war] was going to be a very hard sell, if not impossible [sic], to persuade the American people that we were going to put up 150,000 or 200,000 American troops to go in on the ground. . . . The chiefs were split [as well]. There was strong opposition within the ranks as such. If you look at the terrain, you can understand why. I have seen it, and I think it would have been a very difficult campaign. There were bridges [which] could have been dropped, with Milosevic's forces up in the hills just zeroing down on our forces. There could have been substantial casualties. And if we had started to suffer substantial casualties, I am convinced it would have turned into quite a contentious issue up on the Hill. . . . It was never a close call in getting a consensus to put land forces in. There may have been one or two countries that said they'd be supportive. But out of 19 total, I doubt very much whether we could have gotten consensus. I'm convinced we could not have. . . . I think it's easy to sit on the sidelines and say, if only we had led, they would have followed. But none of those people were part of these conversations. We found strong opposition. . . . It would have been very difficult to get the support of countries that were under enormous domestic pressure to not even participate in any way in Kosovo. . . . Those who said if we had only led . . . fail to appreciate the intensity of the opposition within those countries.[29]

"By the end of the war, was President Clinton ready to send U.S. troops into Kosovo to finish the job? Right after the bombing ended, he gave an interview to Jim Lehrer during which he said that he believed that Milosevic surrendered in part because the Serbs believed a NATO ground operation was inevitable.[30] During the war, however, the president felt he could go no further than making statements such as 'we have not and will not take any option off the table.'[31] If this was a signal to Milosevic that he should expect ground forces to be used, it was a pretty vague one.

"If Clinton was willing to escalate to a ground war, why didn't he openly make that threat? A serious and unmistakable statement from Clinton that the United States was prepared to use ground troops might well be what was needed to get Milosevic to reconsider whether further resistance was in his interests. When you think of the human, political, and economic costs that a ground war would entail, it's hard to believe that Clinton wouldn't throw out an unmistakable threat in an attempt to avoid those costs.

"It's worth considering how difficult it is to figure out what politicians actually planned to do at the time. Keep in mind the fact that everyone had expected this to be a short conflict. When it

went on far longer than expected, the Clinton administration came under intense criticism for getting the United States and NATO embroiled in a war that it had no sure way to win cheaply. Then the air campaign turned into a win—contrary to the expectations of many—at the same time that there were *some* signs that the president was trying to warm up the invasion threat.

"There was a clear political motive for administration officials to suggest, after the fact, that they were ready to invade if necessary. If the United States was prepared to invade, then the win in Kosovo would seem like less a matter of luck and more the result of the administration's determination to do whatever was necessary to see the struggle through to the end. These motives would be shared by any president in a similar position. Secretary Cohen's statement, on the other hand, sounds a bit more credible, since it cuts against those incentives.

"The alliance had frequently indicated that this June 15 was the deadline to start preparations in order to execute the operation before the onset of winter. At the time Milosevic gave in, not only were the resources in the theater woefully inadequate for such an operation, there was no indication that additional troops and equipment were in the pipeline.[32] If NATO and the U.S. Congress were reluctant to support a ground operation before the deadline, they would be even less likely to be in favor if the most opportune time for an invasion had passed. An experienced politician like Clinton would be sure to recognize this.

"Clark was strongly in favor of an invasion; he had even taken some political heat at an early stage for candidly mentioning it to some senators. The service chiefs were apparently against the idea, however. When Clark briefed Shelton on ground options on May 19, he sensed 'ambivalence' from the CJCS. Shelton, however, also saw a need 'to force a [political] decision.'[33] But as late in the game as June 2, Clark was pointedly not invited to a discussion of the ground option at the White House, apparently because of expectations that he would lobby aggressively for a ground campaign.[34]

"Congress was not keen to engage in a ground war. In April, it had voted 249 to 180 to prohibit funding for ground forces unless Clinton put it up to a vote at some future juncture.[35] Polls from the same month showed that a majority of the American public would not support a ground operation if casualties were significant.[36] These were serious considerations for a president that had no military record, and who did not enjoy the warmest of relations with the Pentagon.

"There were risks, of course. A genuine threat to go in on the ground might cost us a significant amount of international support. Many of our NATO allies—Greece, Italy, and Germany in particular—were struggling to maintain support for the air campaign. In Greece, the bombing was opposed by 97 percent of the population;[37] it was hard to imagine that Athens would sign off on an escalation to a ground campaign.

"At the same time," Gable said, "Berger said that they were going to win the war at all costs. And when you think about it, plinking away with air power over the course of a long winter while refugees are dying of exposure is not the sort of image that any president would want on the Newshour—or in the history books, for that matter. And if you're

Milosevic and you're not sure what's in the cards, don't you want to assume the worst? If the Russians support a UN resolution that authorizes force, then you're really up the Danube without a paddle. It's hard to say either way."

McCauley thanked him and left. He wasn't a fan of having to interpret such an ambivalent situation for his superiors, but that was his job. He returned to his office, and got ready to run off a memo summarizing what he'd picked up on the two decisions.

Notes

1. Richard Holbrooke, *To End a War* (New York: Random House, 1998), 26.
2. John J. Mearsheimer, "Shrink Bosnia to Save It," *New York Times*, 31 March 1993, 23.
3. BBC, "Kosovo Liberation Army Emerges from the Shadows," http://news.bbc.co.uk/1/hi/special_report/1998/kosovo2/62067.stm.
4. Ivo H. Daalder and Michael E. O'Hanlon, *Winning Ugly: NATO's War to Save Kosovo* (Washington, D.C.: Brookings Institution, 2000), 27.
5. Daalder and O'Hanlon, *Winning Ugly*, 24, 25.
6. Holbrooke, *To End a War*, 125.
7. Wesley K. Clark, *Waging Modern War* (New York: PublicAffairs, 2001), 177.
8. Clark, *Waging Modern War*, 171. In a conversation with Secretary of State Madeleine Albright, GEN Clark stated that he expected Milosevic to act against the Kosovar civilian population.
9. Jane Perlez, "For 8 Years, a Strained Relationship with the Military," *New York Times*, 12 December 2000, A17.
10. Madeleine Albright, *Madam Secretary* (New York: Miramax Books, 2003), 383.
11. Daalder and O'Hanlon, *Winning Ugly*, 31–33.
12. Albright, *Madam Secretary*, 386.
13. Daalder and O'Hanlon, *Winning Ugly*, 43.
14. Albright, *Madam Secretary*, 389.
15. Daalder and O'Hanlon, *Winning Ugly*, 47.
16. Mike O'Connor, "Attack by Serbs Shatters a Cease-Fire in Kosovo," *New York Times* (25 December 1998), A1.
17. Daalder and O'Hanlon, *Winning Ugly*, 64.
18. Albright, *Madam Secretary*, 396–397. Albright later called the other Contact Group foreign ministers on her hotel line, knowing that it was tapped. "If I [Albright] were misrepresenting Moscow's position, I expected to find out in short order," 397. Albright heard nothing to contradict her understanding of Yeltsin's position.
19. Tim Judah, *Kosovo: War and Revenge* (New Haven: Yale Univ. Press, 2000), 210, 213–214.
20. See also Stephen T. Hosmer, *Why Milosevic Decided to Settle When He Did* (Santa Monica: RAND, 2001).
21. Albright, *Madam Secretary*, 406.
22. Clark, *Waging Modern War*, 167.
23. Thomas W. Lippman, "Albright Misjudged Milosevic on Kosovo," *Washington Post*, 7 April 1999, A1.
24. Daalder and O'Hanlon, *Winning Ugly*, 298n85.
25. Linda D. Kozaryn, "Albright Says Kosovo Matters to United States," *Armed Forces Information Service*, 25 February 1999, http://www.defenselink.mil/news/Feb1999/n02081999_9902084.html.
26. Daalder and O'Hanlon, *Winning Ugly*, 94.
27. Cohen statement, *U.S. Policy Regarding Kosovo*, Senate Committee on Armed Services, 106th Cong., 1st sess. (15 April 1999).
28. Clark, *Waging Modern War*, 405.
29. Interview with U.S. Secretary of Defense William Cohen, *Frontline,* 22 February 2000.
30. Interview with Jim Lehrer, *NewsHour with Jim Lehrer,* 11 June 1999.
31. Quoted in Katherine Q. Seelye, "Clinton Resists Renewed Calls for Ground Troops in Kosovo," *New York Times,* 19 May 1999, A10.
32. Interview with LTC Clemson Turregano. LTC Turregano was the Commander, 1–35 Armor, 1st Armored Division.
33. Clark, *Waging Modern War*, 309, 310.

34. Ben Macintyre, "White House Snubs Hawkish General," *Times* (London), 3 June 1999. See also Steven Lee Myers, "U.S. Military Chiefs Firm: No Ground Force for Kosovo," *New York Times*, 3 June 1999, 16.
35. Charles Babington and Juliet Eilperin, "Clinton Signals Raids May Last 3 More Months: House Votes to Require Assent for Ground Troops," *Washington Post*, 29 April 1999, A1.
36. Jane Perlez, "Clinton's Quandary: No Approach to End War Is Fast or Certain of Success," *New York Times*, 29 April 1999, A16.
37. Daalder and O'Hanlon, *Winning Ugly*, 161.

Hurricane Katrina

RANDY G. WIETMAN, LARRY M. THOMPSON, AND JOHN SEGERSON

> I don't believe you need to be in any way involved in emergency preparation or response to see that there was a significant disconnect between the federal, state and the local government. I can't tell you, as we're having this conversation, as to why it occurred, but it is very, very clear that it did occur.[1]
>
> —Former director of the Department of Homeland Security Tom Ridge

The year 2005 brought the most active hurricane season in recorded history. Hurricane Katrina was the twelfth named storm of that year and first made landfall near Miami, Florida, on 24 August 2005 at 6:30 p.m. A killer storm from the start, Katrina caused 14 deaths and inflicted approximately $700 million in damage in Florida. By 26 August, Hurricane Katrina strengthened over the warm waters of the Gulf of Mexico. The National Hurricane Center (NHC) predicted Katrina's next landfall would occur near Buras, Louisiana. Katrina continued to strengthen. Fifty-six hours later Katrina, now a Category 5 hurricane,[2] made landfall only 18 miles from its predicted point of impact. In the next 48 hours, Katrina's strength fell to Category 3. Based on the NHC's tracking and analysis of Katrina's strength and course, more than 1.2 million people were evacuated from the storm's predicted path. Yet, despite early warning and preparatory efforts, Katrina killed approximately 1,400 people. The storm's power and devastation quickly overwhelmed local and state authorities, and even the federal government found its response effort challenged. Wind and water are usually a hurricane's most lethal weapons, but in the case of Katrina, water did most of the damage. The water did not arrive tsunami-like in a single wave of destruction. The surge from Katrina worked like a burgeoning high tide and kept coming for hours. The devastation to the Gulf Coast region was overwhelming, and almost all fatalities later appeared to be related to large-scale flooding as a result of the storm surge.

Water was also the primary killer in New Orleans, although flooding was to blame as well as storm surge. Most of the city of New Orleans is below sea level and is kept dry through an intricate system of pumps and levees. Greater New Orleans is subdivided into four smaller areas known as parishes.* All four of these parishes (Jefferson, Orleans, St. Bernard, and Plaquemines) in the Greater New Orleans region were flooded to varying degrees. Water topped many levees in the New Orleans area, but breaches occurred at the Seventeenth Street, London Avenue, and Industrial canals,† allowing Lake Pontchartrain to pour into northern New Orleans. Approximately 250 billion gallons of water inundated the city,

* A parish is roughly equivalent to a county.

† Navigation between the Mississippi River and waterways east of the river is via the Inner Harbor Navigation Canal (IHNC), locally known as the Industrial Canal.

rendering it uninhabitable for approximately 350,000 citizens. Parts of the city remained underwater for 43 days. When the water did recede, it had destroyed everything—furniture, refrigerators, 30-foot boats—leaving oily rings around every house and structure.[3]

The storm smashed marine vessels, impacting flood walls, and left barges obstructing the Inner Harbor Navigational Channel (IHNC). Fires broke out as natural gas lines erupted throughout the city—many eruptions due to roots ripping through the pipes after trees were toppled by water erosion. There were also more than 100 ruptures in regional oil storage facilities, leaving parts of the St. Bernard and Plaquemines parishes awash in up to two feet of oil. Some neighborhoods ceased to exist. Approximately 80 percent of New Orleans was submerged. Cellular phone towers and communications equipment were destroyed. The roofs of nearly 100,000 houses were damaged.

Katrina destroyed almost all forms of communications, including cell phone towers. Flood waters also filled generating plants and hospital basements, shorting out backup electrical systems. Almost all city vehicles were unable to navigate the flooded streets. The hurricane basically crippled every essential service the city provided. As a result, survivors were terribly isolated from news and information, and recovery efforts faced enormous challenges.

By any measure Katrina was one of the most damaging storms to ever hit the United States. The storm scoured whole towns off the map of the Gulf Coast in addition to flattening one of the most famous cities on earth. Yet Katrina was not a bolt from the blue. It had moved from the Atlantic, onto the Florida peninsula, back over the Gulf of Mexico, and inexorably made its way ashore on the Gulf Coast. The progress of the storm had been watched every inch of the way, and actions had been taken to prepare for its arrival.

> The US Army Corps of Engineers (USACE) installed blue plastic roofs to approximately 100,000 homes that had sustained damage to the roof but were otherwise habitable. More than nine months later, most of the blue roofs remained.

PREDICTIONS AND PREPARATIONS

Disasters of Katrina's magnitude are not unexpected. For example, the Federal Emergency Management Agency (FEMA) conducted a large-scale hurricane exercise in Baton Rouge in 2004. The exercise featured an imaginary Hurricane Pam and used realistic weather and damage information developed by the National Weather Service (NWS), the USACE, the Louisiana State University Hurricane Center, and other agencies to model the effects of a Category 3, 4, or 5 storm on New Orleans. The Pam report turned out to be a remarkably accurate indication of what ultimately happened with Katrina. The exercise predicted winds of 120 mph and up to 20 inches of rain in parts of southeast Louisiana and a storm surge that topped levees in the New Orleans area. More than one million residents would be evacuated and approximately 500,000 buildings would be damaged or completely destroyed. A brief summary of the action plans taken from this exercise centered on debris removal, providing shelter, search and rescue requirements, medical needs, and post-storm school requirements for children. Although the predicted outcomes of the exercise were fairly accurate, many of the resulting "plans" lacked a true understanding of the scope

of the requirements—for example, what was needed for search and rescue. Nevertheless, some of the key players, including the FEMA regional director, were confident in their level of preparedness simply because they believed they knew what to expect.[4]

At the conclusion of the Pam exercise, the Louisiana Office of Homeland Security and Emergency Preparedness (LOHSEP)* hosted a planning conference to begin the process of correcting the identified shortcomings. Unfortunately, no follow-up planning conferences were scheduled until late July 2005—too late to significantly improve the region's readiness before Katrina's landfall.[5]

As Katrina moved toward its date with destiny, the NWS did its job, too. The NWS provides weather, hydrologic, and climate forecasts and warnings for the United States and its territories, adjacent waters, and ocean areas for the protection of life and property and the enhancement of the national economy. NWS data and products form a national information database and infrastructure that can be used by other governmental agencies, the private sector, the public, and the global community.

The NWS plotted Katrina early and often and tracked the storm for a full week before landfall. All pertinent information was shared with local, state, and federal actors and the media. Landfall projections released to the public 56 hours before Katrina came ashore were off by only 18 miles. This was exceptionally accurate, as the average 48-hour error is 160 miles. The Hurricane Center's predicted strength for Katrina at landfall, delivered two days before the storm hit, was off the mark by only 10 miles per hour.[6] Essentially, the NWS presented the information exactly as it should have and *when* it should have. Additionally, the NWS issued Hurricane Local Statements (HLS) highlighting the likelihood of New Orleans' levees being overtopped.[7] For example, the day before Katrina hit, the NWS office in Slidell issued a warning saying: "MOST OF THE AREA WILL BE UNINHABITABLE FOR WEEKS . . . PERHAPS LONGER . . . HUMAN SUFFERING INCREDIBLE BY MODERN STANDARDS."[8] As the storm approached, emergency managers from the parishes, the mayor of New Orleans, and the governor met every few hours to discuss this information.

The flood walls and levees of the New Orleans area had been a point of contention for residents for many years. On average, the levee systems throughout much of New Orleans were designed for water levels up to 15–17 feet. The storm surge in these areas ultimately was in excess of 25 feet. Some walls were intended to keep the waters of Lake Pontchartrain out of New Orleans, while other walls were to keep out the waters of Lake Borgne and the Mississippi. Walls installed over the last several decades along the city's drainage and barge canals for marine traffic were built for Category 3 hurricanes, as were the levees along the Mississippi.[9] When Katrina hit New Orleans it was a strong Category 3, but numerous flood walls and levees experienced catastrophic failure.

The Army Corps of Engineers was informed about the hurricane's potential track and strength, and on 25 August stood up an Emergency Operations Center in New Orleans.

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* LOHSEP built a detailed plan for the overall responsibilities of local government as well as guidelines for coordination with regional, state, and federal government.

However, because the Corps is staffed predominantly by civilians, commanders have no authority to initiate a mandatory recall of personnel in a disaster. Many USACE employees who were expected to be first responders were also New Orleans residents and often decided that saving themselves and their families took priority. Consequently, despite the overwhelming need for a response from the USACE, as of 1 September only 54 percent of USACE's personnel could be accounted for.

NEW ORLEANS BRACES AND TAKES A HIT

New Orleans Mayor Ray Nagin accepted the NWS's early evaluation of the storm's strength and power. He warned local residents and, on 28 August, ordered the people of New Orleans to evacuate. Yet, from previous experience, the mayor also knew there was a strong antievacuation mind-set in New Orleans—a belief that "storms always seem to miss New Orleans." Since 1851, there had been 75 major hurricanes—Category 3 or greater—to make landfall in the United States. None of these storms caused the devastation that Katrina caused in New Orleans.[10] Nevertheless, up to 1.2 million Louisiana residents followed the mayor's mandatory evacuation orders.

Louisiana had an evacuation plan for New Orleans. There were, of course, several assumptions made. Among these was that the primary means of hurricane evacuation was going to be by personal vehicles, although buses, government-owned vehicles, and vehicles provided by volunteer agencies could also be used to provide transportation for individuals who lacked transportation or required assistance in evacuating.[11] Unfortunately, in a manner similar to the employees of the Army Corps of Engineers, when the city flooded, many of these volunteers elected to save themselves and their families first.

A program established by both New Orleans and Jefferson parishes, called "Brother's Keeper," under which volunteers on a phone bank in the state's Emergency Operations Center (EOC)* matched up drivers with riders, was expected to facilitate near-total evacuation. Yet thousands of residents did not evacuate to safer locations because they lacked any means to leave. The EOC had underestimated how many households had no private transportation at all, and there were simply not enough vehicles to completely evacuate New Orleans—particularly in Orleans parish. Residents of New Orleans's mainly privately owned nursing homes were particularly vulnerable, as each facility was responsible for producing an evacuation plan and most had not adequately done so. One nursing home, Saint Rita's, did not evacuate at all, and 35 of the home's residents died.[12]

Although the city had an evacuation plan and knew there was a shortage of vehicles, there was no designated mass shelter. The Superdome, which many observers later assumed was for the general public, was actually intended to temporarily house only people with "special needs." Nevertheless, members of the general public were among those streaming into the building when the Superdome started filling on Sunday before landfall.[13] By Monday, the authorities were turning people away from the Superdome and

* The EOC is a year-round, full-time facility set up for the collection and dissemination of disaster-related information.

pointing them in the direction of the Convention Center, ten blocks away. The Convention Center was a sprawling complex of meeting halls nearly a mile long, near the Mississippi River. Food and water never arrived at the Convention Center because it was never intended to serve as a shelter of any kind. It was supposed to be only a bus stop where evacuees would wait for transportation. But transportation never came and the Convention Center filled with displaced citizens.[14] It wasn't until the arrival of the National Guard, and then the 82nd Airborne Division, on Saturday, 3 September, that an orderly evacuation of the Convention Center commenced.

The inability of the NOPD* to keep order at the Superdome was symptomatic of the police situation all over the city. Part of the NOPD's problem might have been preexisting. Prior to the storm, the murder rate in New Orleans was already 10 times the national average, and the NOPD was notorious for failures of leadership, professionalism, and discipline.[15] Any law enforcement or security professional might be skeptical of such an organization's ability to respond to a major crisis. Yet it is important, and only fair, to put the NOPD's performance into perspective. NOPD officers were required to reside within the city limits, so most of them were personally affected by Katrina. Many had to decide between a sense of duty to their families or a larger duty to the force and the city's population. Consequently, in many cases they were victims of the storm as well as responders. Because many precinct houses and other installations were flooded, officers who reported for duty were largely deprived of ammunition, radio communication, and transportation. Cell phones did not work, and it was hard to find boats needed for search and rescue. Police walkie-talkies were ineffective because they used a unique rechargeable battery and most of the rechargers were under water or without power during the crisis. Police therefore had to operate on a single circuit, and that was overwhelmed with police, fire, and ambulance calls from the extended metropolitan area. Police at one point were trying to fight the disaster from a couple of picnic tables and a few folding chairs set up in a casino driveway because their headquarters was flooded. Police headquarters eventually moved to the Hyatt Regency.

As the police proved unable to maintain security and as food and water stocks dwindled, looting became rampant. In some cases people were taking the necessities of life. In others, they concentrated on luxury, highly salable goods. Weapons were frequently among the first items stolen. For the most part the looting did not appear to be the work of organized gangs as much as groups of individuals. At times it became difficult to distinguish looters from city employees. For example, the Sixth District police who found a local Wal-Mart's glass doors smashed and full of people grabbing merchandise found that they, too, needed to improvise. The police chased the looters away and then used the remaining food from Wal-Mart's coolers to sustain themselves. Other officers "liberated" some butane tanks, pots and pans, and a metal rack with which to make a stove. They set up a kitchen in the parking lot, feeding meals of gumbo, pasta, or burgers to a hundred officers a day. The mission of the Sixth District police officers, at that point, was their own survival.[16] In the wake of the

* New Orleans Police Department.

storm, some 320 officers (of the NOPD's 1,750-strong force) resigned, were terminated, or were placed under investigation for abandoning their duties.[17]

> For the poor, without resources, the disappearance of authority was genuinely terrifying. Many had never left the city, or southern Louisiana, in all their lives. They faced a terrible choice: turn themselves in to face evacuation, or tough it out. If we stay, how long will it be before the power and the water come back on and the grocery stores open? If we go, go where? To the Superdome, where lawlessness apparently reigned? To the Convention Center, to get on a bus? A bus to where? The rumor that evacuees weren't being told their destination before boarding buses turned out to be true. With no reliable authority to issue information, the holdouts became paralyzed.[18]

Medical services in the city were also hard hit. Hospitals lost power, and hospital staff often could not get to or leave work. Supplies ran out, and those people who survived in elaborate artificial bubbles of medical technology began to die, some of them quite quickly. Hospitals also became magnets for people who were desperately trying to save sick or injured loved ones. In other less capable or dedicated facilities, such as the nursing home mentioned earlier, the situation quickly became hellish and even lethal.

AND WHAT OF THE STATE?

Like Mayor Nagin, Governor Kathleen Blanco was well aware of Katrina's approach. She had alerted her adjutant general and the rest of her advisers. She had declared a state of emergency well in advance of the hurricane's landfall, had made contact with FEMA, and approved President Bush's declaring Louisiana a disaster zone before Katrina struck. Understandably, she too, thought Louisiana was ready. She too, was wrong.

Many of the same factors that crippled the responses of city personnel and organizations were present at the state level. Some National Guard armories, barracks, and command facilities flooded. Communications were demolished and roadways were submerged. Roads that were not inundated were clogged with people fleeing the city. Neighboring states had their own Katrina problems, and guardsmen had to choose between protecting their families and protecting their communities. As the city went, so went the state. Although criticized for not making her decision sooner, three days after Katrina had pummeled New Orleans, Governor Blanco asked for federal assistance.

THE FEDERAL GOVERNMENT'S TURN . . . TIME FOR INTERAGENCY COOPERATION

In order to deal with a disaster of the scope and scale of post-Katrina New Orleans the United States needed to mount a nearly unprecedented level of effort. Multiple agencies would have to communicate, cooperate, and coordinate. Luckily, the U.S. government was well aware of these requirements and had, at least on paper, come up with procedures to mount such a complex undertaking.

THE INTERAGENCY PROCESS

In the United States, a tiered response to a catastrophic natural or man-made disaster is expected, escalating, if needed, from local to state to federal assistance. The people who are "first responders," including police, ambulance, and fire crews, are supposed to

immediately assess the scope and nature of the disaster. The actions of these first responders are coordinated by an incident commander, who is usually from the local emergency management office. If the incident commander determines that the extent of damage is beyond the local authorities' ability to respond, he can appeal to the state for additional assistance. The state, in turn, can mobilize additional resources, including state-level law enforcement, National Guard troops, and staff from the state emergency management agency to help coordinate the response. Additionally, the governor of the state can call other governors to send additional assistance, often in the form of National Guardsmen, under what is known as the Emergency Management Assistance Compact (EMAC). All 48 states of the continental United States and the District of Columbia have joined in this agreement, which identifies what resources they will make available to other governors in an emergency and how reimbursement for those services will be made.

When a disaster is of such magnitude that local and state officials cannot handle the response alone or through the EMAC, they can then turn to the federal government for help. The president may declare the disaster an Incident of National Significance (INS) by invoking the Stafford Act and initiate a federal response regardless of whether a state has made a formal request.

Unless the president makes an exception, requests for military assistance must originate from a lead federal agency, typically FEMA. The request is then sent to the Office of the Secretary of Defense (OSD) for evaluation according to the criteria of legality, readiness, lethality, risk, and cost. Once the secretary of defense (SECDEF) approves the requests, they are forwarded to the Joint Directorate of Military Support (JDOMS) within the Joint Staff. As action agent for coordinating and directing the execution of Department of Defense support missions to civilian authorities—known as Defense Support of Civil Authorities (DSCA)—JDOMS provides the appropriate orders to U.S. Northern Command (NORTHCOM). A defense coordinating officer (DCO) is normally designated and deployed to the area of the incident. The DCO is then to serve as the single point of contact for DoD resources for other government agencies operating in the incident area.

> The DCO, as a representative of the active-duty component of the military, does not have operational control over the U.S. Army Corps of Engineers or National Guard personnel operating on state active duty or under Title 32 status.[19] Under Title 32, the federal government is administratively responsible for the National Guard in terms of pay and benefits; operationally, however, the Guard still works for the governor.

Requests for support usually fall into one of three categories: special events, immediate, and disaster response. Those responsible for special events plan, coordinate, and manage security and public safety support to federal, state, and local law enforcement agencies and civilian organizers of extraordinary public gatherings, such as Olympic Games, inaugurations, and Super Bowl games. Immediate response is any form of quick reaction taken by a DoD component or military commander to save lives, prevent human suffering, or mitigate great property damage under imminently serious conditions. When such conditions exist and time does not permit prior approval from higher headquarters, local commanders are

authorized to take necessary action to respond to requests of civil authorities. Examples include restoration of essential public services, rescue or evacuation operations, and emergency medical care. As soon as is practical, the local commander reports the request and the nature of the response through the chain of command to the DoD executive secretary.

Federal departments assist with disasters on a reimbursable basis. FEMA is responsible for coordinating with local and state officials for federal aid in the event of a catastrophic disaster. The Department of Homeland Security (DHS) will then appoint a Principal Federal Official (PFO),* who can come from any organization under DHS. The PFO will then make requests for assistance (RFAs) from other federal agencies. In this case, requests were made of DoD agencies, through the DoD's Executive Secretary. DoD discourages employment of critical assets to support local and state authorities unless civilian agencies are plainly unable to meet the task. Thus, if a contractor can adequately execute a task, the JDMOS will make the decision to give the tasking to the contractor. While DoD will support FEMA, it still must take into consideration that DoD's primary mission is to prosecute the nation's wars. RFAs therefore may be denied if the requested assistance is deemed to interfere with current military operations.

After JDOMS has approval from the Joint Staff chain of command, the RFA order goes to OSD for its review and subsequent SECDEF approval. After the SECDEF issues that approval, JDOMS releases the order. At that time, DoD assets take their direction from the PFO or JTF commander, if one is designated.

> Concurrently, the process of issuing RFAs requires that JDOMS starts coordinating with the combatant commands (COCOMs) early so requested services and defense agency support will get to the right place and at the right time.

Anticipating a potential disaster, NORTHCOM ordered First and Fifth Armies to begin planning for Katrina relief operations. Lieutenant General Russel L. Honoré, commanding First Army, understood he would be the most likely choice to command a Hurricane Relief Joint Task Force and moved his command closer to Louisiana. Honoré, himself from Louisiana, is a blunt-speaking, take-charge, and lead-from-the-front sort of person. His expectations proved correct, and he was rapidly selected to command Joint Task Force (JTF) Katrina. The Department of Homeland Security was the lead federal agency, and FEMA director Michael Brown was chosen to be in charge of the effort. Almost every federal agency and department would also be involved to some extent.

One of the immediate problems facing Director Brown, LTG Honoré, and other leaders was how to continue rescue operations while restoring security to New Orleans. There was no shortage of people willing to help. Civilian law enforcement agencies from other states provided personnel. Federal law enforcement agencies also played a major role. Specific agencies included the U.S. Attorney's Office, the Federal Bureau of Investigation (FBI), the Drug Enforcement Agency (DEA), the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the U.S. Customs and Border Protection, the U.S. Border Patrol, U.S.

* The appointed PFO can be anyone within, or supporting, the PFA (primary federal agency). In this case, the PFA was DHS.

Immigration and Customs Enforcement, and the Federal Air Marshal Service. Many of the personnel were already located in field offices in Louisiana. In an effort to make the federal efforts more effective, most of the federal personnel were deputized as state law enforcement officials so they could fully partner with local police. During the first week following the hurricane, local, state, and federal law enforcement personnel began daily 9:00 a.m. meetings at the Harrah's Casino in downtown New Orleans.[20] The NOPD ran the meetings and ultimately was able to effectively utilize the services from all of these organizations. In general, efforts during the first few days of the flood centered on finding victims and getting them out of New Orleans to "higher ground." That task was made even more difficult by individuals who chose to stay amid the devastation out of hopelessness and despair.

Unfortunately, there were problems from the start. Within days every major media outlet in the United States had reporters on the ground covering the story. Live images from the city often contradicted what official briefers were saying, and the popular image of New Orleans was one of panic, lawlessness, and incompetence. Political leaders, including Mayor Nagin, Governor Blanco, and Director Brown, received intense criticism. There was also friction between these actors. Differing expectations and priorities between local, state, and federal officials quickly surfaced. The mayor seemed inclined to look directly to the federal government for help, and to believe that the kind of help the city needed should come from the military, emphatically asserting that LTG Honoré should have total authority to get the job done.

To some degree it is easy to sympathize with the mayor. The military was practically the only organization that could provide essential, lifesaving services quickly and comprehensively once state and local providers were overwhelmed. And indeed, the DoD's response to Hurricane Katrina involved the largest military deployment within the United States since the Civil War.[21] The military, however, has its faults and limits, and they are amplified when the DoD is compelled to act through large ad hoc organizations like JTF Katrina. One of the most important constraints on the military's ability to manage domestic disaster response, particularly in the early stages, is the nation's reliance on local control. DoD lacks the detailed knowledge of local conditions essential to effect relief in the early stages of the response. For Katrina, there were two distinct military chains of command—one for federal troops and one for National Guard troops under state command. This dual chain of command was not unique or unprecedented. In fact, it is the expected scenario for any large-scale natural disaster. Governors would not normally be expected to give up command and control of their National Guard. During the response effort, federal officials considered ways to structure a unified command. According to Deputy Homeland Security Advisor Ken Rapuano, federal officials discussed with Governor Blanco the possibility of federalizing the National Guard. President Bush also offered Governor Blanco a memorandum of agreement that would have placed LTG Honoré under Governor Blanco in the chain of command, and in charge of National Guard troops in Louisiana. In this proposal, Honoré would serve in two capacities—first, as the commander of federal troops ultimately answering to the president, and second, as the commander of the Louisiana National Guard, answering to Blanco. Governor Blanco rejected this proposal.

Governor Blanco did indeed want "federal help," but she did not want to federalize her National Guard, either directly or indirectly. Federalizing a National Guard unit takes command and control of those troops away from the governor and gives them the status of active-duty "Title 10" troops under regular Army leadership. Both the NORTHCOM commander ADM Timothy Keating and President Bush thought that "active-duty forces should be given complete authority for responding to catastrophic disasters." LTG Steven Blum (Chief, National Guard Bureau) believed that this dispensation would be tantamount to a "policy of domestic regime change."[22] As the adviser to the governor with respect to the National Guard, Blum counseled Governor Blanco not to federalize their troops for fear of losing control, or to expect any recall of Louisiana National Guard units from Iraq, given the need for personnel there. On 2 September, Blanco received a fax from the White House asking that she sign a letter requesting stronger federal control.[23] After considering the matter, she declined.[24] In the aftermath of Katrina, all players admitted that the state-federal relationship needed improvement.

In contrast, one of the bright spots of the overall response to Katrina was state-to-state cooperation. The EMAC, in particular, promoted effective mutual assistance. EMAC provides form and structure to interstate mutual aid where attaining aid otherwise could be a process of "hit or miss." With EMAC, a stricken state can request and receive assistance from other member states quickly and efficiently, resolving two key issues up front: liability and reimbursement. This mutual support turned out to be an invaluable asset for Louisiana. Through EMAC, almost 68,000 personnel (civilian and National Guard) were sent to affected areas. More than 29,000 of those personnel came from states other than Louisiana. Mutual assistance came from every state in the compact. In direct support of Katrina, more than 2,188 resource requests (missions) were filled. Record numbers of National Guard troops, local responders, and medical personnel were deployed through the compact.[25] Initially, there were 54 different payroll and benefit systems. National Guard troops deployed under EMACs with various states followed state-specific rules, entitlements, and agreements. To remedy the resulting bureaucratic disarray, these forces were activated under Title 32 of the U.S. Code. Their consequent federal status permitted uniform administration while allowing continued command and control by the governor.

Although they did exist, such bright spots were not highly visible to the U.S. public. Officials kept speaking of positive actions and improvements, but the media seemed to tell a different story. Director Brown quickly became a lightning rod for complaints. One problem involved the lack of a coordination mechanism and standardized processes between the varying organizations. This led to a duplication of effort in some locations and a lack of response in others. For example, in New Orleans, the Louisiana National Guard and the U.S. Coast Guard maintained separate tactical operations centers for airborne search-and-rescue missions. The two entities divided up areas and ran separate operations.

On 9 September, Brown was removed from his position of authority and returned to Washington. He resigned as FEMA director shortly thereafter. Secretary Chertoff (DHS)

replaced Brown as the PFO with Vice-Admiral Thad W. Allen,* Chief of Staff of the U.S. Coast Guard. Allen was the PFO for the entire Gulf Coast recovery from Hurricane Katrina. In part, Allen may have been selected because, unlike many other organizations, the Coast Guard effort in Katrina was seen as immediate and heroic. On 29 August, the day Katrina made landfall, the U.S. Coast Guard Sector New Orleans Incident Management Team was stood up in Alexandria, Louisiana. During normal conditions, there were 15 helicopters assigned within the Eighth Coast Guard District, along with four fixed-wing aircraft and 16 cutters. Within hours of Hurricane Katrina's passing, the Coast Guard surged 31 cutters, 76 aircraft, 131 boats, and over 4,000 personnel into the affected areas.[26] The first Coast Guard rescue occurred within a few hours after the storm made landfall.

As the relief effort unfolded, medical support remained a difficult problem. The Army was able to deploy expeditionary medical support squadrons (EMEDS) toward the end of the first week of the response. EMEDS are the Army's replacement for the old Korean War mobile army surgical hospital (MASH) units. EMEDS were eventually deployed inside the city, including at the Convention Center. Another health asset was the disaster medical assistance teams (DMATs) deployed by FEMA. These teams arrived quickly and set up in New Orleans International Airport. However, team personnel reached the disaster zone before any of their supplies did. Despite evacuations to the airport and subsequent transfers out of the airport later that numbered in the thousands, DMATs performed triage in its most basic format—often black-tagging the sickest people and culling them from the masses so they could die in a separate area.[27] Many of the patients (25,000 in all) arrived as evacuees from the city, from hospitals that could not care for them because they did not have DMATs assigned, and from hospitals that had lost power when their emergency generators were flooded.

As the waters began to recede, political issues emerged. Mayor Nagin quickly made clear his expectation that his city would quickly be resettled. In contrast, VADM Allen did not consider the mayor's priority of getting residents back to New Orleans as soon as possible to be prudent. Only after President Bush reinforced his support for Allen did the mayor reverse his earlier statements about the relative safety of returning to New Orleans.[28]

By 13 September, considerable order had been restored to New Orleans and the relief process had been reasonably well hammered out. There would still be setbacks, and the arrival of Hurricane Rita in late September temporarily interrupted the return of civilians to portions of New Orleans. Yet, by and large, the immediate response was over. Longer-term restoration and repair would take as long as a decade and continue to the present day.

POSTMORTEM: WHAT WENT WRONG? WHAT WENT RIGHT?

The soil of New Orleans was still muddy as local, state, and federal agencies began sifting through the lessons of Katrina. Although these efforts continue to the present day, several key areas of agreement have emerged. These include concerns about: a lack of interagency operability, the role and performance of FEMA, the role and performance of DoD, and the question of overall command in a massive disaster.

* Allen was selected as the PFO because of his experience but also because his organization (Coast Guard) reports to DHS.

INTERAGENCY INTEROPERABILITY

Since 2001, the federal government has given $8.6 billion to states for equipment, first responder training, and disaster exercises. In 2005, the DHS gave the states $2.1 billion, of which $925 million was allocated for communications upgrades. To Louisiana alone, since 1999, the federal government had allocated over $107 million for equipment purchases.[29] But inaction at multiple levels of government in preparing for the expected loss of communications hindered the response effort by compromising situational awareness and command and control. This issue has been long debated among the federal, state, and local levels, but thus far remains largely unresolved. As a result, when the moment of truth arrived, the NOPD's communications system failed and was inoperative for three days.

Additionally, NORTHCOM communicates mainly through a SECRET Internet Protocol Router Network (SIPRNET). Most of the other organizations involved in a crisis operate on nonsecure networks. Converting documents to a format that can be shared among different agencies is a slow and imprecise process. NORTHCOM also experienced many of the more basic challenges that other agencies and organizations experienced following the hurricane's landfall. Much of the area infrastructure, including communications equipment, was not available. For an extended period following landfall, VOCO (Verbal Orders of Commanding Officer) was often the only viable means of getting orders to the intended organizations, and the only authoritative source.[30]

Ultimately, Amateur Radio Emergency Services (ARES) volunteers provided communication services as a partial solution. These ARES volunteers—known as ham operators—from across the nation served New Orleans particularly well by relaying Red Cross messages to and from the affected areas and processing 48,000 requests for emergency communications assistance, including numerous communications involving NORTHCOM.[31] Although some workarounds for communications, like Nextel's "communications on wheels," provided mobile cellular phone technology when most of the cell towers were destroyed, this did not even offer a partial solution until almost a week after landfall.

> Lack of interoperability before, during, and following the storm was a major contributor to a degraded response. Although the State of Louisiana has, for some time, recognized the need for interoperable statewide communications, fiscal constraints and challenges of integrating multiple technologies rendered this goal unrealized.[32] One remedy would be a national standard for the spectrum, hardware, and even batteries (noting that rechargeable batteries may not be the best option during a crisis).

Interoperability failures also led to inadequate dissemination of information, or dissemination of inaccurate information. Perhaps the most notable example involved reports that "evacuation was halted because of gunfire directed at helicopters." The actual incident involved one individual who was arrested and then set free after being charged with firing three random shots out his window, but within 24 hours, all commentators on every major American television news network had helped turn the helicopter sniper image into the disaster's enduring symbol of dysfunctional urbanites too depraved to be saved. The lack of communications interoperability also affected the type of response marshaled by various

other organizations. For example, the Louisiana National Guard refused to approach the Convention Center until 2 September because it was erroneously reported that the crowd was hostile towards the military and that reinforcements would be needed before the building could be secured. In reality the Guardsmen received a warm welcome and were cheered when they arrived.

FEMA

Created under the Carter administration, FEMA was placed under the DHS umbrella in 2003 and subsequently officially divested of its preparedness function and tasked solely with response and recovery. (The preparedness function would be consolidated under a new Undersecretary for Preparedness.) Both the director of FEMA and the undersecretary would report directly to Secretary of Homeland Security Michael Chertoff. This reorganization, however, reduced the size of the original budget and similarly pared down FEMA's workforce. Much of the talent in FEMA migrated to other agencies. The result was that FEMA was seen as a bereft "organ donor."[33]

In a statement by former president Jimmy Carter following Katrina:

> The agency's diminished role under Homeland Security led to its recent failures. I made three promises. One was that the leader of FEMA would always be highly qualified in handling a disaster. The second promise I made was that FEMA would always be an independent agency, and would not be part of another larger agency. And the third promise I made was that FEMA would always be adequately financed. Well, as you know, all three promises have been violated.[34]

In testimony following Katrina, Michael Brown testified that he had asked the DHS for funding to implement the lessons learned from the Hurricane Pam exercise conducted less than a year earlier. That funding was never approved. He also testified that FEMA had suffered from a brain drain and diminished financial resources as a result of the consolidation.

The National Response Plan (NRP) and the National Incident Management System (NIMS) were crafted to provide a framework and template, respectively, for the federal government, through FEMA, to work with other agencies in a crisis. NIMS enables all responders, regardless of jurisd,iction or discipline, to work effectively and efficiently using a nationally accepted template that makes federal, state, local, private sector, and nongovernmental organization (NGO) cooperation possible regardless of cause, size, or complexity of the natural disaster. To make this system function, some preparation work is needed. States, localities, and NGOs are asked to align their plans and procedures with these guidelines and procedures. This preparation component of FEMA has changed dramatically since FEMA's inception during the Carter years. Former FEMA director Brown had urged then-DHS secretary Tom Ridge not to further distance the preparedness function of FEMA from response function, as it could result in ineffective and uncoordinated response efforts by FEMA.[35] Brown was overruled, and the program was transferred to the Office of Domestic Preparedness (ODP). The end result was a transfer of the overall preparedness function of FEMA to another organization that, for all practical purposes, contained only a loose and distant tie to FEMA's remaining mission of response.

NGOs helped fill the shortfall in government-provided relief. According to the Center on Philanthropy at Indiana University, private donations for Katrina victims had reached $4 billion. The Government Accountability Office reported that charitable organizations in the Gulf Coast region set a U.S. record for disaster-response donations.[36] The American Red Cross (ARC) amounted to a quasi-governmental agency in the context of disaster response. Under the NRP, the ARC is the primary agency responsible for mass care, housing, and human services. It is the only NGO with lead agency responsibilities under the NRP. Although the ARC produced the largest amount of money ever raised by a charity—at one point, providing almost 950,000 meals a day—Katrina ultimately strained its capabilities. The ARC had substantial technical communication problems with FEMA and had difficulty meeting the need for basic necessities. Important assistance was also provided by the Salvation Army, Catholic Charities, the United Way, and the National Voluntary Organizations Active in Disaster (NVOAD). The Salvation Army, in particular, contributed 72 mobile canteens, each capable of providing 5,000 hot meals per day, and two 54-foot mobile kitchens, each capable of providing 20,000 hot meals per day. Approximately 40 additional organizations and charities provided services. NVOAD served as the national umbrella organization that organized their collective efforts and held daily conference calls with FEMA.

Furthermore, many of the plans and much of the preparation for catastrophic events had already been in place, but both poor communication and poor drafting made the execution of these plans problematic. For example, the NRP's Catastrophic Incident Annex (CIA), in theory, is to prescribe the manner in which the federal disaster response posture would switch, upon a declaration by the secretary of homeland security of a catastrophic incident, from the traditional "pull" system, where states make specific requests, to one driven by a proactive "push" system, in which the federal government moves assets to the affected areas without waiting for state requests. Under the current CIA, however, the general operating presumption is that predeployed federal resources remain at staging areas until requested by the state and local incident command authorities. Thus, the actual employment of federal resources depends, to a good degree, upon requests from state or local authorities and very often upon their participation in delivering aid to those in need.[37] Accordingly, the CIA was not drafted in line with its intended purpose. FEMA was unaware of this discrepancy, however, and therefore did little to remedy it.

There were also problems with timing. For example, upon declaring an INS, the secretary of homeland security is supposed to name a PFO to manage the response. For Hurricane Rita, the PFO was designated two days before landfall; for Katrina, two days after landfall. While it is easy to see that the quick response to Rita was driven by what had happened during Katrina, it is no less true that DHS and FEMA were better prepared for Rita because they had their organization in place before the storm made landfall.

The Interagency Incident Management Group (IIMG)—essentially a multiagency federal coordination entity that reports directly to the secretary of homeland security to facilitate the strategic response to a domestic incident—had timing problems, too. It was activated at 2:00 p.m. on 30 August, well after Katrina came ashore. The IIMG consists of senior representatives from nearly 40 different organizations, including DHS components, other federal departments and agencies, and NGOs. Its membership is flexible and can be tailored to provide appropriate subject-matter expertise depending upon the nature of the threat or incident at hand. The IIMG works in concert with other NRP coordinating

structures, such as the Homeland Security Operations Center (HSOC), the nation's 24-hour nerve center for information sharing, law enforcement, and domestic incident management through vertical coordination among federal, state, territorial, local, and private-sector partners. The IIMG also works with the FEMA National Response Coordination Center (NRCC) to facilitate such things as EMAC agreements.

In terms of division of labor, the IIMG is intended to focus on strategic-level issues, while the HSOC and NRCC work in partnership to maintain situational awareness and solve operational and tactical problems. The HSOC is the primary national hub for domestic incident management, operational coordination, and situational awareness. The HSOC facilitates homeland security information-sharing and operational coordination with other federal, state, local, tribal, and nongovernmental EOCs. The NRCC, located on the campus of the University of Texas Medical Branch in Galveston, Texas, is a multiagency center that provides overall federal response coordination for incidents of national significance and emergency management program implementation. FEMA maintains the NRCC as a functional component of the HSOC in support of incident management operations.[38] When IIMG was ultimately activated, it was because potential long-term flooding of New Orleans represented a "catastrophic crisis within a crisis," so that the secretary would now require the additional layer of incident management capability. It was at this point that Chertoff issued a formal memorandum designating FEMA Director Michael Brown (who was already on the ground in Baton Rouge) as the PFO under the NRP. The NRP also called for a joint field office (JFO) and emergency support function (ESF) structure to facilitate federal incident management coordination at the local level and integrated federal interaction with key state and local officials.

> The emergency support functions (ESF) are found in the NRP and list the various functions and the corresponding agencies responsible for execution. For example, ESF #5 is Firefighting, and the agency responsible for its execution is the USDA (Forest Service). ESF #9 is Urban Search and Rescue, and DHS (FEMA) is the agency responsible.

The states have their own counterparts to the JFO. Each state has EOCs,* and these organizations, in turn, have a link with the JFO through their respective coordinating officers. The EOC in New Orleans was chaotic, but no more so than the federal equivalent. One of the complaints (internally and externally) about the performance of the EOCs was that they had poor situational awareness. The relationship between the parishes and the state was similar to the link between the state and FEMA. It is generally a "pull" system, and requests need to be made for assistance and supplies. But communications often broke down. Some inefficiency may have been caused by an incessant flow of requests for information from the press and from prominent individuals like Oprah Winfrey and Sean Penn, who at times were seen "freelancing efforts" out of the EOC headquarters without coordination with the state coordinating officer (SCO).[39]

> The Defense Coordinating Officer (DCO) is in charge of the Defense Coordinating Element (DCE) at the federal level. The states' equivalent is the EOC and it is run by the SCO.

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* Each parish has an EOC with full-time staff.

Within the federal government, communications among DoD, DHS, and, in particular, FEMA during the immediate week after landfall reflected a lack of information sharing, near panic, and a lack of knowledge of formal process and standard operating procedure. In the event, the reliance of FEMA upon DoD during the Hurricane Katrina response prompted a DoD takeover of FEMA's responsibilities as logistics manager. The military, which had the resources to appraise the situation more effectively and readily than FEMA, and actually drafted its own requests for assistance and sent them to FEMA, which in turn copied them and then sent them back to the DoD for action.[40] As a result of this convoluted process, the origin of many of the requests for DoD to provide active-duty forces was difficult to determine. Some requests were made directly to LTG Honoré instead of going through FEMA.[41] The procedure is the source of a lingering dispute between DoD and DHS. DoD maintains that it honored all FEMA requests for assistance in the Katrina relief effort, refusing no missions. FEMA officials insist that DoD effectively declined some missions in the informal coordination process that preceded an official FEMA request, such that when DoD thought a mission was inappropriate, FEMA was pressured simply not to request the assistance from DoD.

DOD

Pursuant to the NRP, the planned response for Katrina incorporated a JTF, leaving NORTHCOM in charge of federal active troops and Governor Blanco and her adjutant general, MG Landrenau, in charge of the Louisiana National Guard. DoD, governors, and other state and local officials were expected to actively participate in joint planning for emergencies, both natural and man-made. That was supposed to occur under NORTHCOM's area of responsibility. An analysis of one of NORTHCOM's earlier exercises, however, revealed that there were too few civilian authorities in DoD's DSCA planning.

> DSCA was the military's support link to civilian authority. Civilians often had a better understanding of how DSCA could contribute. During an exercise just a month before Katrina, NORTHCOM admitted that they did not have adequate insight into the state's capabilities in the Gulf Coast region.[42]

NORTHCOM's internal procedures were also problematic. Created after 9/11, NORTHCOM, in addition to defending North America, Puerto Rico, and the U.S. Virgin Islands against externally sourced threats and acts of aggression, is responsible for civil support missions that include domestic relief operations in response to such disasters as fires, hurricanes, floods, and earthquakes. The command provides assistance to a primary federal agency (PFA) when tasked by DoD. In a post-Katrina interview, CDR Rich Farrell, who works in the Operations Planning Group (OPG) of NORTHCOM, noted that while NORTHCOM generally operates in a joint environment, upon activation for a natural disaster or national threat NORTHCOM changes over to an "adaptive headquarters" type of operational environment that is more aligned to function in the operational environment appropriate to a national crisis. Both operational constructs are viable, but the transition from one to the other is slow and cumbersome and the conversion is not entirely clean. Thus, a post-crisis performance assessment of JTF Katrina by VADM Jim Hull noted that

First Army headquarters, which formed the nucleus of JTF Katrina, was not organized or resourced to operate as a joint task force. Furthermore, JTF Katrina was an ad hoc organization and had no well-established standard operating procedures. As the JTF Katrina headquarters transitioned from the very tactical mind-set of lifesaving to the operational mind-set of sustaining and enabling a joint force, the headquarters continued to be distracted by near-term tactical problems.[43]

DoD had other problems. One example: DoD apparently initially refused to allow the shipment of Meals Ready to Eat (MREs) on FEMA-provided transportation, claiming that it could only ship MREs on "DoD-approved carriers." DLA "would arrange transportation within the next 24–48 hours." Also, the communication between the National Guard and DoD was poor. The National Guard did not have a good working knowledge of the DoD strategic planning guidance that was developed at NORTHCOM concerning the military's support to civilian authorities.[44] These difficulties were not entirely unexpected. Although urban search-and-rescue operations are multiagency in nature, no standardized federal system currently exists to effectively integrate operations.

The Army's component of NORTHCOM is Army North/5th Army (ARNORTH). When asked why the response to Katrina turned out so poorly, COL John Simpson, Chief of Plans for ARNORTH, responded that "even though we may have an all-star team, we cannot expect to win unless we train and scrimmage before the day of the big game."[45] There was very little in the way of long-term or permanent liaison between the major federal organizations. It is all expected to come together on the day of the "big game," but as one might expect, many aspects that should be well established and understood (C2, logistics, contingency plans) simply fail to function under the stress of a large-scale disaster. People will indeed show up to play but often have not read the playbook.

"There is a reason for that," said COL Simpson. "The playbooks have not been established."[46] It is COL Simpson's opinion that, in general, the major organizations expected to respond to a disaster need to think with some degree of continuity with respect to planning. "To the extent possible and feasible," he said, "the ad hoc process of disaster response needs to move towards a more dynamic and continuous process of readiness. Incorporating permanent defense coordinating officers (DCOs) and defense coordinating elements (DCEs) into FEMA regions would go a long way in providing that continuity in planning that FEMA has gradually lost over the years."[47]

> ARNORTH was established in 2005 and is manned by what was previously Fifth Army. Both First Army and Fifth Army responded to the disaster. The First Army troops were assigned to JTF Katrina under the command of LTG Russel Honoré. The designation of Honoré as the DCO for JTF Katrina was made by the Department of Homeland Security.

STATE VERSUS FEDERAL AUTHORITY?

The 1878 federal statute known as Posse Comitatus Act broadly prohibits the use of federal troops for law enforcement against American citizens, though a number of exceptions have arisen. In accordance with the act, NORTHCOM would not normally provide law enforcement, for which the state—including the National Guard—would remain primarily

responsible. NORTHCOM has few standing forces but is assigned forces whenever necessary to execute missions, as ordered by the president and secretary of defense.[48]

> In response to a natural disaster, NORTHCOM would typically provide active-duty military personnel (Title 10 troops) for civil support functions only.

During a brief at NORTHCOM following Katrina, President Bush specifically wanted to know if there was "a circumstance in which the Department of Defense becomes the lead agency."[49] Clearly in the case of a terrorist attack that would be the case, but natural disaster scenarios are more ambiguous. If the federal government, in the form of Title 10 troops, were to be first responders, a revision of the Posse Comitatus Act might be considered necessary. Under current law, disaster preparedness and response is primarily a state responsibility. Federal assistance can be requested by governors, and federal *military* assistance is handled through NORTHCOM. Posse Comitatus is not a barrier to federal troops providing logistical support during natural disasters; nor does it prohibit the president from using the Army to restore order in extraordinary circumstances, even over the objection of a state governor. The law does not apply to National Guard troops because they are called up by their respective governors and under local control.

More broadly, however, the Posse Comitatus Act reflects an enduring civil doctrine under which the American military is primarily to be used as a war-fighting force. It shields the armed forces from the burden of additional domestic duties, and ultimately from the possibility of being involved in an incident like the Kent State shootings—perpetrated by National Guardsmen—in 1970. The military is good at many things, but "our fighting forces are sometimes seen as the giant Swiss Army knife, infinitely adaptable to a wide array of tasks. Because the military is so formidably competent at its central mission, defeating our enemies in wartime, presidents and the public tend to think it can handle any job it is asked to do."[50] Indeed, President Bush has supported the military's role in disaster response, in substantial part because following Katrina it appeared to be the only organization fully competent to do so. But Pentagon officials have indicated that they do not support a new, expanded role for the active-duty military. Among other things, they argue that National Guard units can respond more quickly and have a ready understanding of the region that active-duty components would lack.

The question remained whether government authorities would be sufficiently prepared to avoid a reprise of the Katrina disaster were another terrible hurricane to score a direct hit on a major city.

LEARNING FROM THE MISTAKES OF HURRICANE KATRINA

> The magnitude of Hurricane Katrina does not excuse our inadequate preparedness and response, but rather it must serve as a catalyst for far-reaching reform and transformation. To do this, we must understand Hurricane Katrina in its proper context.[51]
>
> —FEMA Director David Paulison

The poor federal response to Katrina was a public relations disaster for the Bush administration. In response to findings from various investigations and pressure from the public, President Bush signed the Post-Katrina Emergency Reform Act on 4 October 2006, which

"significantly reorganized FEMA, provided it substantial new authority to remedy gaps that became apparent in the response to Hurricane Katrina in August 2005 . . . and included a more robust preparedness mission for FEMA."[52] FEMA would remain within DHS's organizational structure; however, a FEMA director would gain a great deal of autonomy, including the ability to report directly to the president (rather than just to the DHS secretary). Missions FEMA had lost after the creation of DHS—especially in terms of preparedness—and resources that had been taken away were also restored.

The White House's own investigation, *The Federal Response to Hurricane Katrina: Lessons Learned,* was released in February 2006. The over-200-page after-action report focused on the federal response to Katrina, and would influence changes in the law (Post-Katrina Emergency Reform Act of 2006) as well as process changes and a cultural shift in the way the federal government responds to disasters. Agencies would no longer sit back and wait to be asked for assistance; nor would assistance be withheld before all the paperwork was finished. DHS Secretary Chertoff made this point clear during a CNN interview in the midst of the California wildfires:

> "I think there's no question that [there were] a couple of the lessons from Katrina which we have put into effect here," Chertoff said. "First of all, planning and preparation in advance for these kinds of challenges, so that we have worked together and planned together with the Defense Department and with state authorities well in advance of the crisis. That's been a big help here. . . . Second, we have really flooded the zone as quickly as possible by staging assets to deal both with the firefighting issue and with the response issue." . . . Chertoff said . . . he hadn't waited for the paperwork to be signed before staging assistance.
>
> "We have been moving cots, blankets, other supplies into the area of San Diego so that we can handle any necessity for additional sheltering capacity," he said. "We've also moved air assets to be poised to take flight when we do have the opportunity to deal with the fire, once the winds begin to die down."[53]

An important lesson was learned that has implications beyond a federal response to a disaster in the United States. Familiarity with the operating environment is crucial; by establishing regional teams that regularly work with local, state, and nongovernmental organizations and the private sector a greater understanding is achieved with respect to regional capabilities and the ways locals get things done. This familiarity allows federal teams to perform more effectively during a disaster.

HURRICANE GUSTAV

In August 2008, Hurricane Gustav, a Category 3 hurricane, entered the Gulf of Mexico en route to the United States, almost exactly three years after Hurricane Katrina smashed into New Orleans. With Gustav headed for landfall, President Bush must have had images of Katrina running through his mind as he made every effort to be more engaged with events as they unfolded. He canceled an appearance at the Republican National Convention in order to fly down to the region to get a firsthand look at the situation. He explained

his actions as follows: "What I look for is to determine whether or not assets are in place to help, whether or not there's coordination and whether or not there's preparation for recovery. So to that end, I feel good," Bush said.[54] President Bush was assessing the preparedness of his team, an area that had earned the better part of a chapter in the post-Katrina after-action report. The president knew full well his administration would be under the microscope during Hurricane Gustav. Eric Lipton of the *New York Times* was one of many to cover how much the federal response efforts had improved:

> Representatives of more than a dozen federal agencies tried to ensure that everyone knew what part they had to play as Hurricane Gustav turned toward the Gulf Coast. "What I need from you is a sense of exactly what the Coast Guard can do," Paul Schwartz, the leader of the 24-hour command center that was activated for the storm, told a Coast Guard representative. . . .
>
> The evidence was visible both in the command center in Washington and on the ground across the Gulf Coast. The Coast Guard, Defense Department, National Guard and FEMA all have far more personnel, equipment and emergency supplies in the region than they did three years ago before the hurricane, officials said.
>
> FEMA, for example, had 18 search-and-rescue teams ready to go, compared with 7 before Katrina landed. It had 240 truckloads of water and packaged meals and 400 more truckloads of blankets, cots and tarps, far more than three years ago.
>
> The Defense Department was coordinating the airlift of more than 1,000 patients from Gulf Coast hospitals and nursing homes.
>
> The Coast Guard had about 500 extra personnel assigned to the response, said Vice Adm. Bob Papp, ready to operate 31 helicopters brought to the region, and two squads with small rescue boats, among other equipment.[55]

Clear distinctions could be drawn between the level of federal preparedness during Katrina and that during Gustav, to include involved oversight at the highest levels during Gustav, setting up of regional and local command centers early during Gustav, and putting in place of substantially more assets that were well prepared to deal with the aftermath should Hurricane Gustav prove to be every bit as devastating as Katrina.

The standard operating procedure and associated processes for evacuation of Louisiana residents had improved greatly since Katrina. Many followed the timely urging of Governor Bobby Jindal and Mayor Ray Nagin to leave the city, perhaps aided by the fairly recent memory of over 1,800 people lost to Katrina. Yet there had also been a vast improvement in evacuation plans and processes, which included altered flow control on the highways and expanded bus, train, and airlift capacity. As Gustav approached, CBS News reported that "[t]ens of thousands of people were evacuated by local and state government" as "part of a mammoth exodus of nearly 2 million people."[56] Evacuation plans accounted for not only the able-bodied, as 8,000 nursing homes and 27 hospitals relocated over 29,000 residents and patients to seven different states.[57] The mammoth task of relocating nearly two million people and finding shelter for tens of thousands was considered a success.

Evacuation of people was not the only challenge to remedy; during Katrina, many pets were left behind. Many subsequently drowned or starved, while others sustained themselves off of any food source available, which, in some cases, included human remains. Survivors who had remained in place during the storm often had no choice other than to leave their pets behind since "animals hadn't been allowed on buses or rescue boats."[58] During Gustav "about 160 climate-controlled vehicles operated around the clock . . . to whisk pets and their owners out of harm's way."[59] Thousands of pets were sent to a shelter inland, where their owners could pick them up at a later date. According to Maryann Mott of National Geographic News, "[T]he successful pet evacuation was made possible by a disaster plan crafted by government agencies, emergency workers, and animal-welfare groups."[60] The safe evacuation of thousands of pets stood in stark contrast to what happened just three years earlier.

Three years proved to be enough time to make drastic improvements in evacuation plans; however, not everything went like clockwork. Despite all the warnings from state leaders nearly 10,000 residents of coastal Louisiana remained behind.[61] "'Nobody wants to leave,' said Jim Forly, a computer technician, standing on Chestnut Street. His brother David, a scooter mechanic, was wearing a pistol on his belt.

"'You just have to get over the hype,' Jim Forly said. His whole family was staying. 'We'll know by Tuesday if it was worth it.'"[62] Fortunately, people risking the storm were the minority. Had Gustav packed a greater punch, people who stayed behind might have required first responders to assist with their evacuation, medical assistance, or the unenviable job of removing and identifying their corpses. As the memory of Katrina fades, and gambles taken by staying home pay off, it is likely more residents will succumb to complacency and fail to heed evacuation warnings.

When Katrina brought the floodwaters to New Orleans, Saint Rita's nursing home in Chalmette was unable to evacuate 35 of its 60 residents; these 35 residents all subsequently drowned. Things were not much better at Memorial Medical Center, after four days of conditions that included no electricity, no running water or sewage, and temperatures approaching 110 degrees. During those hellish four days, Memorial Medical Center lost 40 of its patients.[63] As mentioned earlier, many hospitals and nursing homes had dramatically improved their evacuation plans. Yet, as Gustav bore down on the Gulf Coast, not all hospitals and nursing homes were up to the task. Several still required last-minute assistance as "their own evacuation plans had fallen through."[64] Fortunately federal responders were in place and prepared with more than enough resources to transport the stranded residents to temporary shelter.

Lastly, who could forget images of tens of thousands of New Orleans residents stranded while hundreds of buses sat in flooded parking lots? The evacuation of the tens of thousands of Louisiana residents reliant on public transportation would be critical in minimizing follow-on rescue operations should the levees fail in Gustav. The evacuation process was initially hampered when computer problems surfaced in a registry system set up to account for people as they boarded buses and trains; the computerized

accounting system was appropriately abandoned by Louisiana officials once it was found to be responsible for creating long lines and slowing evacuation.[65] A shortage of busing was also an issue during the initial stages of the evacuation during Gustav, as only 200 of the 700 buses that city and state officials had procured showed up.[66] Fortunately the federal government was able to assist in making up the difference in necessary buses. Once again, prestaged assets and good coordination allowed officials to successfully evacuate Gulf Coast residents in a timely manner.

Because many of the trailers and mobile homes ordered by FEMA for use in housing homeless victims of Katrina had subsequently been discovered to have "unsafe levels of formaldehyde" in the interiors, FEMA no longer intended to use them in response to Gustav.[67] It was not clear how FEMA would have met a large emergency housing need if Gustav had required it. In January FEMA did release its 2009 FEMA Disaster Housing Plan, which states, "FEMA may, in close coordination with the State and local communities, provide *interim housing* to eligible disaster survivors when they are unable to quickly return to their pre-disaster dwellings, or are unable to quickly secure permanent housing."[68] The plan includes partnering with the states to establish air quality standards on all units purchased. The plan has yet to be tested. At issue, according to Spencer Hsu of the *Washington Post,* was "weak government contracting, sloppy private construction, a surge of low-quality wood imports from China, and inconsistent regulation. . . . But each of the key players has pointed fingers at others, a chain of blame."[69]

The communications interoperability problems experienced during 9/11 and Katrina are also prevalent on the battlefield. Various agencies and organizations had independently procured communication systems without considering the need to interoperate with each other. In the instance of Katrina, the problem was compounded by the lack of electrical power that resulted from prolonged flooding. An article from Homeland Security Newswire highlights the importance of interoperability.

> The tragedy of 9/11 and the catastrophe of Katrina reinforced what first responders knew for years—the lack of communication interoperability costs lives. Fifteen hours of New York City Fire Department radio communications from 9/11 revealed chaos, confusion and frustration. From 8:46 a.m. to well after the collapse of the first tower different voices heard over the call channels revealed disorientation and panic. The exchanges show that first responders did not know whether to stay in the towers or retreat, how to find emergency assistance or how to find people trapped in the debris. They were hamstrung by the inability of different agencies to communicate through the same network. The 9/11 Commission concluded that this lack of communication interoperability was a key factor in the death of at least 121 fire fighters of the 343 that lost their lives on 9/11.
>
> Hurricane Katrina knocked out more than three million customer phone lines in Louisiana, Mississippi and Alabama. The wireless telecommunications network's switching centers that route calls were devastated and more than 1,000 cell sites were put out of service. Power was down. Of the 41 radio stations in the New Orleans area, only 4 remained on the air. Foreigners viewing television coverage of volunteer boaters making their way into

> New Orleans with nothing to go on except for what they could see in front of them were astounded. This was America? World superpower and technological powerhouse?[70]

The aftermath of 9/11 exposed an interoperability problem that would take a tremendous amount of time, resources, and cooperation to correct. Katrina offered an opportunity to measure how far the nation had come in improving interoperability of communications between various government agencies. Senate Majority Leader Bill Frist (R-TN) offered his view of the progress just one week after Katrina hit: "Congress has appropriated funds for interoperability of communications. Yet, from what I saw, there was total failure. Why? We must look at it. We must investigate. We've got to do better." Congress, using implicit powers of oversight drawn from Article I of the Constitution, unleashed its watchdog, the Government Accountability Office (GAO), which released a report in April of 2007 titled *First Responders: Much Work Remains to Improve Communications Interoperability.* The report found interoperability had improved marginally, but also that a completed standard and a national plan to coordinate an investment strategy across the states and federal government were still needed. Without a completed standard, it is possible for vendors to produce communication systems that are incompatible with each other. Without a national plan, there is a lack of sufficient guidance and oversight on how grant money should be spent to shore up interoperability.

Given the attention interoperability received from both 9/11 and Katrina—leading to heightened oversight from Congress—the pressure was on the Department of Homeland Security to produce results. The way DHS addressed this responsibility could be explained using the concepts of authority, mission, structure, process, and products. DHS was given authority and resources from Congress to address the interoperability problem. DHS established the Office of Interoperability and Compatibility under the Science and Technology Directorate (structure). Resources and pressure were provided to develop interoperability standards (product)—"Project 25 (P25)—with the goal of enabling interoperability among products regardless of the manufacturer."[71] A process was established that awarded grant money to states for the purchase of P25-compliant radios. Most recently, the Office for Interoperability and Compatibility approved eight laboratories to test and certify interoperability.[72] The latest action allows DHS to force compliance from vendors and agencies by controlling the testing and certification sites. DHS forces vendors to comply with established standards at these sites to gain certification for their products. States/agencies requesting grants must purchase certified communication systems with federally appropriated funds.

Gustav, like Katrina, offered an opportunity to test how far federal agencies had improved communications interoperability. This issue was closely observed by the State of Louisiana Statewide Interoperability Executive Committee (SIEC), which released a report to the governor on 19 January 2009:

> [V]oice communications withstood its first major test during [Hurricane] Gustav. . . . During the evacuation, response and recovery for Hurricane Gustav, over 1.2 million transmissions in the Greater New Orleans area were made . . . with only 500 busy signals over a

> ten day period. During these two storms [Gustav and Ike], Federal, State and local agencies were able to establish voice communications on shared talkgroups using existing infrastructure and assets. Louisiana's strategic technology reserve was utilized to its fullest extent. All mobile communications assets were deployed throughout Louisiana as well as distribution in excess of 300 radios to local and state agency responders. This type of interoperable communications was something that the State was unable to accomplish during Hurricane Katrina.[73]

The interoperability problem that existed during 9/11 was not created overnight, nor will it be fixed overnight. Nationwide interoperability has a long way to go before victory is in sight. New Orleans received a great deal of attention and resources to mend existing interoperability problems, while other federal agencies, cities, towns, and states still have a lot of work to do.

Several lessons about organizations can be reinforced from the experience of Katrina. In FEMA's case, we saw how, over the years, situational factors caused a shift in resources, mission, and structure. We also saw how catastrophic failure can rapidly bring about change in an organization. Change can have a positive effect, as we saw in Gustav, where local, state, and federal agencies performed much better in coordinating the hurricane evacuation. Rapid change can also bring about unintended consequences—such as the gap in the natural disaster preparedness mission seen during Katrina. Change can also be complex and slow; the brief coverage of interoperability only touches upon major hurdles of getting groups to agree upon standards and encouraging local, state, and federal agencies to comply with those standards. Lastly, Katrina and Gustav also show the importance that leadership, communication, and coordination can play in responding to a disaster. Early and orderly evacuation, smooth coordination in getting evacuation assets in place, and sound decision making made all the difference during Gustav. When Gustav hit the Gulf Coast, it did not pack the punch of Katrina, nor did it leave a city under water. Nevertheless, Gustav served as a good test to see how far federal, state, and local officials have come in preparing for a disaster like Katrina. By most accounts, Gustav was perceived as an interagency success.

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The Next Tanker

ROGER H. DUCEY, JOHN SEGERSON, AND DANA STRUCKMAN[1]

BACKGROUND

To understand the Air Force tanker replacement issue, it is helpful to understand the history of air refueling and how tankers enable this nation to project power around the world. It is also important to understand the role the Boeing Company has played over the years in equipping the Air Force (USAF) for this vital mission.

Heavier-than-air flight began on 17 December 1903, and the search to keep airplanes in the air longer began the next day. In 1917, a pilot in the Imperial Russian Navy, Alexander P. de Seversky, proposed increasing the range of combat aircraft by refueling them in flight. De Seversky soon immigrated to the United States and became an engineer in the War Department. He received the first patent for air-to-air refueling in 1921.[2] During the 1920s, the U.S. Army undertook air refueling tests at Rockwell Field, San Diego, California, featuring a hose being lowered from a DH-4B biplane to another aircraft in flight. The first flight made with this system occurred on 20 April 1923, and by 27 August 1923 one of the DH-4Bs had established fourteen world records with a flight lasting more than 37 hours.[3]

Surprisingly, World War II brought about a temporary halt to air refueling research. The combination of very-long-range bombers and forward bases enabled Allied aircraft to meet their operational requirements without it. When the war was over and atomic weapons became an integral part of U.S. war plans, this strategy continued with the United States basing nuclear-capable B-29 bombers in key overseas bases. But the B-29s were vulnerable to "political or military restrictions placed upon them by the host nation's government."[4] At about the same time, propeller-driven bombers lacked the required speed to counter the threat from modern jet fighters that were being designed and tested.[5] The answer was an all-jet bomber that would be fast enough to handle the fighters, but an all-jet bomber would also consume fuel at a much higher rate. The dynamics of the Cold War pushed the Air Force back toward its previously abandoned air fueling efforts.

Faster bombers demanded faster tankers. The Air Force was slow to realize this, slow to fund such a program, and didn't even formally announce the requirement for a new jet tanker until 5 May 1954. Boeing, Convair, Douglas, Fairchild, Lockheed, and Martin were selected to compete. But Boeing had a step up on the competition. In 1952 the company made the decision to invest $16 million, more than twice the net profits of 1951, to build a prototype airplane that would be able to perform in the role of both a military tanker and a civilian airliner. The new airplane was rolled out on 15 May 1954, two months ahead of

schedule. The message was clear: while the other competitors were *talking* about building a tanker, Boeing was *flying* one.[6]

The Air Force decided to procure 29 jet tankers from Boeing as an interim source "pending availability of the aircraft selected as a result of the current competition." Less than two weeks later and prior to the competition deadline, the Air Force announced the further expenditure of $240 million for 88 additional interim Boeing tankers.[7] Oddly enough, Boeing did not win the competition. While Air Material Command recommended Boeing should produce the interim, stopgap tanker, it recommended either Douglas or Lockheed build the full production tanker. In February 1955, Secretary of the Air Force Harold E. Talbott announced that Lockheed's proposal had won the design competition. The Air Force would fund and build one Lockheed prototype immediately but would also purchase another 169 "interim" Boeing tankers in addition to the 117 already ordered. As a result, the winner of the competition was funded to build only one airplane and the loser received enough money to build a sizable fleet. The motivation for the irregular selection process will probably never be known, but may have had much to do with Cold War fears and Boeing's business acumen. As fielding two different tankers would be a logistics nightmare, Boeing's tanker, now known as the KC-135, became the de facto winner.

The tanker saga of 1954 attracted critical congressional attention from the Surveys and Investigations staff of the House Appropriations Committee, which launched an investigation. The subcommittee requested relevant documents pertaining to the selection process, and the Air Force very begrudgingly complied. In the end, the committee criticized the Air Force for the way it conducted the selection process, which seemed to favor Boeing. The Air Force responded to these criticisms by defending its purchase of the Boeing product by asserting that although the Lockheed proposal was the best tanker, the Boeing tanker was cheaper because the company had absorbed the development cost and had eliminated much of the risk by being able to deliver an operable aircraft when the Air Force needed one. An Air Force representative remarked that he "wished more contractors had the courage of their convictions to carry on development at their own expense in anticipation of military requirements."[8] The hearings ended with no vindication or additional sales for Lockheed. For Boeing, its multimillion-dollar gamble had clearly paid off, and the Air Force got a fleet of jet tankers sooner and cheaper than it would have with Lockheed.

The KC-135A first flew in August 1956, and the initial production "Stratotanker" was delivered to Castle Air Force Base in June 1957. The last production model was delivered in 1965. In all, 732 planes were delivered. Ideal for many uses, the aircraft was modified for use in command and control, reconnaissance, transport, and research missions. Over the past decades KC-135 tankers have refueled all types of aircraft in operations impossible to execute without tankers supplying fuel to attack and airlift aircraft. As the 1990s drew to a close, the KC-135s, many more than 40 years old, began to show signs of age and fatigue.

THE LEASE DEAL

With some of its current fleet of KC-135s approaching 50 years of age, the Air Force began to consider a replacement for its venerable "Stratotanker." The Boeing Aircraft Company offered to solve the Air Force's problem by building a tanker version of its 767 commercial jet. In March 2000, Boeing created a business unit to market the 767 tanker worldwide, and in April 2000, Boeing signed a contract with Italy to build four new 767 military tanker/transport aircraft with the first delivery scheduled for 2005. This was followed by a second contract to build four new 767 military tankers for Japan.[9] Boeing also began discussions with the British about a possible new tanker to replace their fleet. Once again, Boeing was looking to leverage off-the-shelf tanker technology to adapt a tanker to an existing design that could be rapidly manufactured and sold to clients. Then the company decided it was time to turn to one of its best and oldest clients.

In a move reminiscent of the 1950s, in February 2001, Boeing delivered an unsolicited offer to build 36 tankers for the U.S. Air Force as a stopgap measure for bolstering Air Force tanker capability pending results of the service's analysis of alternatives (AOA). The AOA was to identify future requirements and determine tanker characteristics best suited to replace the remaining aircraft in the tanker fleet.[10] Due to funding constraints by the continued production of the C-17 and C-130J, the development costs of the F/A-22, JSF, and many space systems, combined with the fact that requirements had yet to be established for the tanker of the future, the Air Force did not take Boeing up on its offer.[11] At a 6 June 2001 hearing before the Defense Subcommittee of the Senate Appropriations Committee, General Michael Ryan, Air Force chief of staff, mentioned the Boeing offer in his response to a question from Senator Ted Stevens (R-AK) on the continued viability of the service's KC-135s. General Ryan stated: "We're looking out in about the next 15 year time frame to begin that replacement."[12] And then came 9/11.

The airline industry was severely and adversely affected by the attacks of September 11. Passengers stopped flying, and orders for new aircraft were canceled or delayed indefinitely. Even prior to 9/11, the U.S. economy had already entered into a recession, and President George W. Bush had declared, "I knew the economy was not in good shape right after I took office. We will do everything we can to enhance recovery."[13] Many members of Congress were looking for ways to stimulate U.S. industry to get businesses hiring again.

Congressional hearings began almost immediately following the attacks, and on 25 September 2001 Representative Norman Dicks, a 14-term Democrat from Washington (home of Boeing's major factory) and a member of the Defense Subcommittee of the House Appropriations Committee, was said to be planning "to insert an amendment into a defense appropriations bill to jump-start the Air Force's purchase of hundreds of Boeing 767 tankers and electronic surveillance planes."[14] Soon after this, a meeting with Boeing was organized by the principal deputy assistant secretary of the Air Force for acquisition, Ms. Darleen Druyun.

Druyun was a rarity—a hard-charging, no-nonsense administrator serving as the Air Force's number-two weapons buyer in a male-dominated world. Druyun began her career in 1970 as an Air Force contract negotiator. For the next 20 years she rose through the ranks in management and budgets jobs with the Office of Management and Budget and NASA before returning to the Air Force in 1993 as the principal deputy assistant secretary for acquisition.[15]

Druyun was in charge of spending $30 billion in defense dollars each year, the largest weapons budget of the services. For over 10 years she amassed a tremendous amount of power and influence in the defense acquisition world. In a *60 Minutes* interview her former boss Marvin Sambur, the assistant secretary of the Air Force for acquisitions, stated, "She believed that no matter what the circumstances she's in charge." When asked about his relationship with Druyun he stated, "Well, she's had lots of bosses over the years. They came and went. So when I came in here, her view was, 'You're temporary, you're the summer help, and I'm gonna be here long after you're gone.'" What Sambur was referring to was the Air Force acquisition structure where top civilian leaders are political appointees of the president. As appointees came and went Druyun, a civilian careerist, remained. Additionally, she was often in charge; at times as much as a year would go by without a political appointee above her.[16] With her reputation came trust and nobody in the Air Force questioned her integrity.

Druyun was known for testing the limits of defense procurement practices and was credited for turning around the C-17 program after it was billions of dollars over budget and a year behind schedule. She bullied contractors into lowering prices by reminding them of budget realities and talked vendors into unprecedented partnerships to save money. She regularly met with contractors to tell them what they were doing right and what they were doing wrong. Druyun was credited with saving the Air Force $20 billion in the process.[17] At the meeting in September 2001, she asked if there was a way to acquire tankers without a large up-front investment of funds. Leasing was a possible answer and had been used in the past.[18]

The FY02 Defense Appropriations Bill authorized the secretary of the Air Force to establish a multiyear program for leasing up to 100 general-purpose Boeing 767 aircraft in commercial configuration. Subsequently, the *Congressional Record* clarified the bill's purpose: "to pursue a 767 general purpose commercial tanker configuration."[19] The bill authorized the deal, but provided no money. In a most unusual fashion, the tanker lease legislation emerged in what Hill veterans refer to as a "virgin birth," meaning it was inserted into the defense appropriations bill after the House and Senate each passed a version of the bill, during closed negotiations between conferees. It was then approved on the House and Senate floors as part of a larger compromise defense bill. Senator Ted Stevens, the chairman of the Senate Appropriations Committee, and a longtime supporter of expanding federal leasing, claimed credit for inserting the language.[20]

The year 2002 started with the Air Force supporting Operations Enduring Freedom and Noble Eagle while it continued to refine the capabilities needed in the next tanker. In

February, Senator McCain (R-AZ) (who served as chairman of the powerful Senate Commerce Committee from 1987 to 2001 and again from 2005 to 2007), along with the European Aeronautic Defence and Space (EADS) Company, parent company of Airbus, with 15 percent of the company owned by the French government, raised the issue of competition in the selection of the next tanker for the U.S. Air Force. Reacting to McCain's concerns, the Air Force acquisition office signed out a request for information (RFI) on 20 February 2002 to Boeing and EADS/Airbus to begin the Air Force's market research and to assess market capabilities in the area of commercial tankers.[21] In March 2002, responses to the RFI were received and, after reviewing Boeing's and EADS's information, the Air Force notified Congress that it had selected Boeing's 767 over the Airbus A-330. Boeing was selected based on its favorable design, schedule, risk factors, and experience building tanker aircraft. The White House Office of Management and Budget, whose mission includes overseeing and coordinating the administration's procurement and financial management, evaluated the Air Force's RFI process and concluded that it was done in a reasonable and fair manner.[22] This was an interesting outcome since purchases of this magnitude normally include a request for proposal (RFP) that includes timeline and pricing information.

For the rest of 2002, the Air Force worked closely with Boeing to compare what capabilities they would like to have in the next tanker and what was possible with the 767 airframe. Secretary of the Air Force James Roche had declared early on that the Air Force would not expend the amount of money required to develop a new tanker from scratch. He was referring to the pursuit of a "developmental aircraft."[23] Developmental aircraft may meet exact requirements, but the costs involved in engineering, testing, and certifying a developmental aircraft are extremely high and a cheaper off-the-shelf commercial product could be modified to provide the major capabilities required of the next-generation tanker. The Operational Requirements Document and the Key Performance Parameters, which establish tanker performance parameters in measurable terms, were approved by the Joint Requirements Oversight Council (JROC) and then signed by the chief of staff of the Air Force on 22 October 2002.

The KC-767 would provide improved capabilities. It would move fuel farther from a shorter airfield than the KC-135R. It would offer greater basing options because of its ability to operate from much shorter runways. The KC-767 would be able to conduct probe and drogue, as well as boom receptacle refuelings on the same mission, which is impossible on the standard KC-135E and R models. The KC-767 would also be air-refuelable. In a transport mission configuration, the KC-767 would carry more pallets and people.[24] Finally, the mission capable rates (airplanes ready to fly right now) were expected to be 90 percent compared to an average of 78 percent for the KC-135R and 71.9 percent for the KC-135E.[25] The utilization of commercial practice maintenance inspections would reduce depot time from an average of 44 days per year for the KC-135 to an anticipated 14 days per year for the KC-767A.[26]

Up to this point, it appeared to be smooth sailing for Boeing and the Air Force. Senator McCain would change all of that, with his charge that the Air Force and Boeing had worked

together to build support for acquiring a new tanker—even though the Air Force had not listed it as an urgent priority item in the Program Objective Memorandum (POM). The POM puts money against a service's most important programs. The Air Force still maintained there was no money for a new tanker with all the other competing programs, such as the F-22, C-17, Joint Strike Fighter, and space systems that needed funding, but the attacks of September 11 opened a new opportunity. The Air Force believed this opportunity enabled it to comply with direction provided by the secretary of defense. When he first took office, Secretary Rumsfeld challenged each of the services to find new and innovative ways of reducing the procurement time for major weapon systems and to take advantage of commercial practices. Secretary Rumsfeld was not alone. Acquisition reform was pushed by many in Congress; a 2001 Congressional Research Service report (11-08-01) stated policy makers were "seeking to make acquisition systems more (1) cost effective; (2) interactive with commercial industries; and (3) committed to procuring state-of-the-art technology for DOD [Department of Defense] weapon systems on a timely basis."[27] Leasing the 767s seemed like a textbook example of what the secretary was asking for.

Senator McCain saw it differently. He believed congressional priorities weren't being observed on the tanker lease. Moreover, McCain maintained there were important reasons to have four separate committees examine and approve major weapon system purchases and then appropriate the money to do it. McCain's statement on earmarks given on the conference report for an Interior appropriations bill sheds some light on his logic:

> Mr. President, while some of these earmarks may have merit, and several of my colleagues will be quick to defend them, this is not the way to fund them. Each of these should be considered by the authorizing committee members in an open hearing and authorized when and if they are seen as spending priorities. The practice of earmarking is how appropriators steer taxpayer dollars to pet projects that likely wouldn't otherwise pass a prioritization formula.[28]

In the tanker lease deal the authorization was made as part of an appropriations bill and wasn't passed by the authorizing committees.

In December 2003, McCain's opposition resulted in Secretary Rumsfeld's putting the program on hold and ordering an investigation by the inspector general. After the initial part of this investigation was complete, the secretary directed three additional reviews be done—by the Pentagon general counsel, the Defense Science Board, and finally the Industrial College of the Armed Forces. As a result of these reports, the secretary decided to postpone the decision on the tanker replacement until after the 2004 election, when an analysis of alternatives could be conducted.

INFLUENCING THE DECISION

As the summer of 2004 progressed, interested parties on both sides of the issue pressed to gain an advantage. In Congress, the House and Senate appropriations committees agreed in mid-July to give the Air Force $100 million and urged the service "to proceed apace with replacing its fleet of aging aerial refueling aircraft with KC-767 tankers." The

House Armed Services Committee earmarked $98.5 million in its version of the 2005 Defense Authorization Act so the Air Force could set up a KC-767 program office, begin advance procurement, and pay development costs for Boeing tankers. The House also ordered the Air Force secretary to "enter into one or more contracts . . . no later than March 1" to begin buying and leasing new Boeing refueling tankers.[29] Senate opponents resoundly objected. "This is another attempt to push through the controversial agreement before further questions challenge its merit or its fiscal responsibility," said Senator Peter Fitzgerald (R-IL). Again, with Senator McCain in the lead, the Senate Armed Services Committee erected multiple roadblocks to quick tanker acquisition. In its version of the authorization act, senators said that before the Air Force can sign any tanker lease or purchase contract, the Defense Department must, among other things, "complete an analysis of alternatives, finish the air refueling portion of the Mobility Capabilities Study, produce a new validated capabilities document, and affirm in writing that the acquisition complies with all applicable laws and regulations."[30]

Senator McCain was also using some other processes to bring pressure to bear on the Department of Defense. In September 2003, he requested all correspondence relating to the tanker deal from Boeing and the Defense Department. Boeing complied, but the Defense Department did not, citing the need to protect proprietary contractor information, as well as pre-decisional staffing, deliberations, and discussions prior to the establishment of official department positions. As this standoff continued through 2003 and into 2004, the Senate Armed Services Committee refused to schedule a nomination hearing or allow a full Senate vote on the president's nomination of Secretary Roche to become secretary of the Army and refused to schedule a nomination hearing for Michael Wynne, who had been nominated by the president to fill the position of under secretary of defense for acquisition, technology, and logistics. Roche later requested that his nomination be withdrawn. In early October 2004, at the confirmation hearing for Air Force general Gregory Martin, the president's nominee to head U.S. Pacific Command, Senator McCain expressed his frustration and serious concern with the Air Force's lack of responsiveness in providing him with the e-mails he had requested. He made it clear to General Martin that he would strongly object to his nomination going forward until he received all the e-mails and answers to all his questions from the Air Force. Taking into account the time that it would take for Senator McCain's staff to review the information after they received it, General Martin felt that "it was in the best interests of the U.S. Pacific Command . . . for me to withdraw my nomination" and remain as the Commander, Air Force Materiel Command.[31]

In October 2004, Darleen Druyun was sentenced to nine months in federal prison as a result of the investigation launched by the Justice Department. The investigation revealed that, while serving as the number-two Air Force acquisition executive, she entered into employment discussions with Boeing's chief financial officer, Michael Sears, before she had recused herself from a decision-making role with regard to the tanker lease deal. She also admitted to favoring Boeing on several other decisions involving other weapon system procurements for the Air Force. In one instance she asked Michael Sears to hire her daughter's fiancé and her daughter while she was considering a $4 billion Boeing contract for C-130

upgrades.[32] Michael Sears quickly set up the jobs. On 15 November 2004, Sears pleaded guilty to a felony conflict-of-interest charge acknowledging that he had offered Druyun a job while she was overseeing billions of dollars in contracts for the Air Force. As a result of the Druyun investigation, the Air Force eliminated her former position "because the long tenure possible for a civilian holding that position can endow them with too much power over acquisition decisions."[33]

During the first week of October 2004, Congress was reaching final agreement on language for the 2005 defense authorization bill. In the final version of the $445.6 billion measure, many difficult compromises were required, but ultimately nothing divided House and Senate conferees as much as the Air Force program to acquire 100 air refueling tankers. Even after the conference report had been cleared by the Senate, which sent the bill to the president for his signature, conferees argued over the meaning of what they had produced. Most important, they disagreed about whether the language in the bill would require Boeing to compete with other companies to build the tankers.[34] On 8 October, Representative Norm Dicks suggested in House floor colloquy with House Armed Services Committee chairman Duncan Hunter (R-CA) that they had won in conference. "The most important point," Dicks said, "is that we don't have to go back and have yet another procurement, because if we did that, it would take years and years before we would start getting tankers." As if in response to the Dicks-Hunter exchange, Senate Armed Services chairman Senator John Warner (R-VA) inserted in the 9 October *Congressional Record* a written exchange with Senator McCain. Not surprisingly, they also claimed victory. In direct contrast to Dicks's contention, McCain said the bill states that "the Air Force cannot acquire, by lease or purchase, Boeing 767s without full and open competition." Boeing chief executive officer Harry Stonecipher agreed with Dicks, telling reporters that the bill would not require a new competition. Ralph Crosby, chairman and chief executive of EADS North America, called the conference report "ambiguous" on the question of competition.[35] Amid congressional battles, acquisition process violations, and legal proceedings, on 19 November 2004, Deputy Defense Secretary Paul Wolfowitz sent a memo to Senator Warner saying that the DoD was conducting an analysis of alternatives to meet U.S. air refueling needs and would require a competition to be conducted before it awarded a contract for the construction of a follow-on aircraft.

NEW LIFE FOR EADS

In the beginning of 2005, Boeing and EADS were still locked in a fierce competition for the lucrative tanker contract. EADS seemed to have new life as Boeing was still reeling from the late 2004 indictment of its chief financial officer, Michael Sears, and the sentencing of Darleen Druyun. The contract that appeared certain to be awarded to Boeing was now back on the table for other bids. EADS created a North American subsidiary so that it could bid on military contracts that were only open to U.S. companies.[36]

EADS North America, taking advantage of Boeing's misfortune, continued its efforts to develop a U.S. presence and to partner with a major U.S. defense contractor in order to counter Boeing's advantage as an American company.[37] Chief among EADS's initiatives was

the announcement that it would begin a 50-state search for a site to build an assembly plant in the United States. This plant would convert French-built Airbus A-330s into tankers if EADS gained the USAF contract (Airbus is a subsidiary of EADS headquartered in Toulouse, France). The facility would employ 1,000 workers and would certainly attract support for EADS from the members of Congress who represented the state and district where the plant would be located.[38] However, not everyone in Congress liked the idea. Senator Patty Murray (D-WA) and Representative Norm Dicks of Washington (home of Boeing's major factory) and Representative Dennis Hastert of Illinois (home of Boeing's corporate headquarters), among others, voiced strong opposition to an essentially European company winning a contract to build planes for the U.S. military. Their message was to "buy American," and in their minds EADS was not an American company, even if it built a plant in the United States. "France will build the planes, and we'll put the decals on them," was the sentiment coming from Senator Murray's office.[39] Since EADS subsidiary Airbus was headquartered in Toulouse, France, this added fuel to the fire. After all, Franco-American relations had experienced a new low in the run-up to the Iraq war in 2003. France opposed U.S. efforts to gain United Nations support for military action in Iraq. Unhappy with France's role in military opposition, Secretary of Defense Rumsfeld said France was a "problem" and made the "old Europe" remark, implying France's role on the world stage has diminished and was a relic of the past. The statement angered many French officials, who called the remarks "inappropriate and arrogant."[40] While France was not alone in providing resistance to military action in Iraq it was the most vocal at the time. It was easy, therefore, to categorize the procurement decision as being between an "American" tanker and a "French" tanker.

NORTHROP GRUMMAN AND EADS TEAM UP

In September 2005, knowing that foreign ownership would hurt its chances for the tanker contract, EADS joined with Northrop Grumman to develop the KC-30. Northrop Grumman was designated as the lead company for the project.[41] Although the basis for Northrop Grumman's new tanker would be the EADS-owned Airbus A-330, the team decided that they needed to have as much of an American face on the company as possible. "My activities since the first day have been focused on creating citizenship for us here in the U.S.," said Ralph Crosby.[42] During the announcement of the partnership, Northrop Grumman and EADS officials stressed that 50 percent of the KC-30 production would happen in the United States. They were also quick to point out that Boeing's KC-767 has "significant foreign content" as well.[43]

As 2005 drew to a close, EADS North America chose Mobile, Alabama, as the site for its 1,000-employee plant. It also planned to build a 150-employee engineering center in Mobile. Components for the KC-30 would still be built in Europe, but final assembly would happen in the United States.[44] Congressional support for EADS came not only from Alabama, as could be predicted from the potential infusion of jobs at the KC-30 plant, but also from Texas and Mississippi, where EADS built helicopters for the U.S. military.[45]

USAF AND THE TANKER SCANDAL FALLOUT

During the flurry of activity in 2005, as the Air Force continued to try and untangle itself from the Boeing tanker lease scandal, Secretary of the Air Force James Roche and Assistant Secretary of the Air Force for Acquisition Marvin Sambur resigned in January. Both Roche and Sambur were under intense pressure from the congressional investigation on the lease deal championed by Senator McCain, who was convinced Ms. Druyun had help. "I simply cannot believe that one person, acting alone, can rip off taxpayers out of billions of dollars," said McCain, who said he will keep pursuing internal Defense Department and Bush administration communications until "all the stewards of taxpayers' funds who committed wrongdoing are held accountable."[46] These resignations, along with the previous firing of Darleen Druyun, now accounted for all of the top-tier USAF leadership in charge of major acquisitions. The incoming secretary of the Air Force, Michael Wynne, would not be confirmed until November 2005.[47] Additionally, a permanent replacement for Dr. Sambur would not be named until August 2006.[48]

Even with the removal of top officials, in some people's minds, the Air Force still had a long way to go until its acquisition process was above reproach. On 29 January 2005, Senator McCain sent a pointed letter to Secretary of Defense Rumsfeld requesting full disclosure by the Air Force concerning its involvement with Boeing in the tanker scandal. Senator McCain felt the USAF was trying to "stymie this effort" and that the DoD was "not proceeding in good faith" with his requests. He further wrote that DoD's "disruption, obfuscation, and delay" in providing his office with the desired documents may "amount to an obstruction of [a] congressional investigation."[49]

The Air Force secretary hoped to reestablish integrity in the Air Force procurement process by appointing Deputy Under Secretary of Defense Sue C. Payton to serve as assistant secretary of the Air Force for acquisition in August 2006. Secretary Wynne said at her confirmation ceremony, "With acquisition experience in industry and government, guided by impeccable character, she will restore our acquisition community to greatness."[50] At a later press conference, Ms. Payton stated, "Our main goal is to be transparent and open and upfront about the things we are acquiring."[51]

USAF REQUEST FOR PROPOSAL

Early in her tenure, however, Secretary Payton faced a controversy in the Air Force's draft KC-X RFP issued 25 September 2006. The DoD uses RFPs to stimulate competition by relaying desired capabilities and schedules so suppliers can provide an informed bid. In this instance the RFP contained unprecedented language requiring bidding companies to give detailed accounting on subsidies received by their governments.[52] This was in response to a U.S./European Union (EU) dispute about government subsidies for aircraft production that was before the World Trade Organization (WTO) for adjudication.[53] As it pertains to the KC-X, the dispute involved a U.S. claim that the EU illegally provided subsidies to EADS for the production of the A-330, thereby reducing the overall production cost of the airplane.[54] This put EADS in a difficult position. In order to remain in the KC-X

competition it would have had to reveal information that could be detrimental to its position in the overall WTO ruling.[55] Some in Congress and in the aerospace industry believed the Air Force's language unduly favored Boeing for this reason.[56] Senator McCain sent incoming secretary of defense Robert Gates a letter voicing this same concern in December 2006.[57]

Under congressional pressure, an updated draft RFP, released 6 December 2006, removed all language requiring disclosure of subsidy information, stating only that the service would not pay additional costs related to the WTO decision.[58] This appeared to help level the playing field for Northrop Grumman/EADS. However, on the eve of the final RFP release, Northrop Grumman complained that the draft RFP favored Boeing's smaller KC-767 and "failed to credit the capabilities of the larger . . . KC-30."[59] According to Northrop Grumman, the KC-30 may be 33 percent more expensive than Boeing's KC-767, but its larger size will allow it to carry more fuel, cargo, and personnel. "If the capabilities-to-cost evaluation metrics aren't included in the final [proposal], Northrop feels the KC-30 will be non-competitive and we will no-bid," said Northrop spokesman Randy Belote.[60] The Air Force rejected the complaints and Northrop Grumman threatened to withdraw from the competition. Even the Air Force's toughest critic on the matter, Senator McCain, believed the final Air Force proposal was fair, but planned to maintain close oversight on the acquisition process.[61] Others were a bit more skeptical. Senator Jeff Sessions from Alabama, where Northrop Grumman/EADS planned to build its plant, remarked that "it does appear there was an effort to sole-source [the tanker replacement] aircraft."[62]

Northrop Grumman/EADS remained in the competition and the official Air Force KC-X RFP was released on 30 January 2007. At this time, the replacement for the tanker had become the Air Force's top acquisition priority.[63]

AIR REFUELING AND LIFT CAPABILITY

Along with the air refueling requirement, the RFP included a need for airlift capability. Even inside the highest levels of the Air Force, there was disagreement as to how the airlift capability should be weighted in the competition. Air Mobility Command's top general, General Duncan McNabb, stated, "We want the new KC-X to do what the C-17 did. It basically changed airlift as we know it."[64] But the Air Force chief of staff, General T. Michael Moseley, a fighter pilot, stressed the refueling role was paramount, although he saw some advantage of having cargo-carrying capability in the KC-X.[65] At a 13 December 2006 briefing he stated, "When you need it as a tanker, it is a tanker." Using it in a lift role was only to be a secondary consideration.[66] "When you don't need hundreds of tankers, then you use it in the mobility [role]," he added.[67]

However, not everyone saw the need for additional lift capability. In March 2007, the Government Accountability Office (GAO) issued a report to the House Armed Services Committee stating that "military decision makers approved the passenger and cargo capability as a requirement although supporting analyses identified no need or associated risk."[68] DoD disagreed, stating that the JROC reviewed the Air Force's analysis and determined there

was "sufficient justification for the [lift] capability."[69] The GAO countered this by saying it believed "DoD still has trouble distinguishing between wants and needs" and recommended to Congress that it "exercise caution when making airlift and tanker investment decisions."[70]

NORTHROP GRUMMAN AND BOEING SUBMIT PROPOSALS

Both Boeing and Northrop Grumman submitted their proposals on 10 April 2007.[71] With over 7,000 pages to dissect in each proposal, the Air Force's source selection evaluation team began its laborious work at Wright-Patterson Air Force Base in Ohio.[72] Its work would determine which company would get the lucrative $35 billion contract to replace 179 of the Air Force's 500 aging KC-135s.[73] Boeing's proposal for the KC-767 stressed the cheaper price tag per aircraft, better fuel efficiency, and greater versatility due to its smaller size in comparison to Northrop Grumman's proposal.[74] The Northrop Grumman/EADS team submitted the KC-30, citing it as the best fit to replace KC-135. "Only [the KC-30] can provide the Air Force with everything that they have asked for and more—more refueling capacity, more station-holding capacity, more cost savings over the long term, more cargo and personnel capacity, and more cost value per aircraft," stated Northrop Grumman's Chief Executive Officer Ronald Sugar.[75]

With so much at stake, the Air Force was "being extra cautious in ensuring that each step of the source selection process [was] thoroughly documented" according to Joe Leising, contracts chief for the 635th Aeronautical Systems Squadron.[76] "I anticipate there will be an immediate protest [by the losing contractor]," said one senior Air Force official.[77] He said he believed it would happen because of the high stakes involved and how critical winning the bid was to each company's future. This is one reason the Air Force stressed that this iteration of the KC-X acquisition process be conducted in a "deliberate and transparent manner, every step of the way."[78]

THE DECISION

On 29 February 2008 Secretary of the Air Force Wynne and vice chief of staff of the Air Force General McNabb announced the long-awaited decision selecting Northrop Grumman/EADS as the winner of the KC-X tanker contract.[79] To the victor, two decades of development and procurement of tanker aircraft worth billions. To the loser, Boeing, an increasing threat from chief rival Airbus, an EADS subsidiary, who plans on breaking ground in Mobile, Alabama, to build a factory to produce wide-body jets for both military and commercial use.[80]

The Air Force hoped the decision would remove the dark cloud that loomed over the KC-X tanker contract, as the stakes were high and the issue was politically charged. The Air Force indicated it was careful to follow established procedures while improving transparency and feedback. Selection was based on a cost-benefit analysis of five factors: mission capability, proposal risk, past performance, cost/price, and a simulated integrated fleet air refueling assessment.[81] Additionally, the Air Force was well aware it had to defend its decision to Boeing during the selection debrief, for the tanker community could not afford

further delays in replacing the aging KC-135 fleet. "The tanker is the number one procurement priority for us right now," General McNabb said. "Buying the new KC-45A [newly named KC-X] is a major step forward and another demonstration of our commitment to recapitalizing our Eisenhower-era inventory of these critical national assets."[82]

THE REACTION

The announcement awarding Northrop Grumman/EADS team the Air Force tanker contract took little time to draw reaction from the halls of Congress. Lawmakers aligned with Boeing quickly voiced their concerns. Kansas representative Todd Tiahrt "vowed to seek a review of the decision 'at the highest levels of the Pentagon and Congress' in hopes of reversing it." He went on to say, "We should have an American tanker built by an American company with American workers. I cannot believe we would create French jobs in place of Kansas jobs."[83] Eight lawmakers from the state of Washington issued a joint statement: "We are outraged that this decision taps European Airbus and its foreign workers to provide a tanker to our American military. We will be asking tough questions about the decision to outsource this contract. We look forward to hearing the Air Force's justification."[84] There should have been little surprise at the strong language as Washington and Kansas are both homes to large Boeing facilities that stood to gain from a lucrative long-term tanker contract.

Not everyone on the Hill was angry, specifically the Alabama lawmakers, where Northrop Grumman/EADS planned to assemble the tankers, creating thousands of new jobs. Senator Richard Shelby of Alabama said he "thought all along that the Northrop Grumman/EADS proposal was the best,"[85] while Representative Jo Bonner (D-AL) said, "We are so very excited about having the opportunity to help the Air Force acquire the most modern and capable refueling tanker—a tanker assembled in America—by Americans."[86]

The dust had yet to settle from the decision, and the response from Boeing was swift. Debbie Logsdon, a union leader, warned, "We will be sending our tax money to Europe to energize their economy while our economy goes in the tank."[87] Norm Dicks, now the vice chairman to the House defense appropriations subcommittee, warned, "We are going to try to eliminate the funding" for the tanker and push to "start this thing over again."[88] One thing was certain, it was too early for EADS to pop the champagne corks, because this journey was not over. Boeing could protest and Congress had not yet authorized and appropriated funding. A media battle ensued with both companies running ads in major outlets touting the capabilities of the aircraft and benefits to the American workforce.

THE PROTEST

Boeing immediately issued a protest to Congress's watchdog, the Government Accountability Office, over the Air Force decision to award Northrop Grumman/EADS the tanker contract. On 10 March Jim McNerney, Boeing's president and chief executive, said, "Our team has taken a very close look at the tanker decision and found serious flaws in the process that we believe warrant appeal."[89] The decision to appeal would be risky; Boeing could alienate its military and global customers. A protest would further delay much needed

replacement tankers for the Air Force and could spark retribution if the Europeans perceived U.S. protectionism in lucrative defense contracts. According to Robbin Laird, president of Arlington (Virginia) defense consultant International Communications & Strategic Assessments, "It would have very negative consequences on international programs, F-35 partners are already nervous."[90] However, a $35 billion dollar contract that could swell to $100 billion over two decades proved too alluring. Boeing's protest would not happen in a vacuum but amid a multi million-dollar advertising and public relations campaign to garner support from congressional allies and union leaders, as well as the U.S. public.[91]

THE GOVERNMENT ACCOUNTABILITY OFFICE WEIGHS IN

The GAO was charged to review the Air Force's acquisition process that awarded the contract to build 179 refueling tankers to Northrop Grumman and European Aeronautic Defence and Space Company. While the GAO assessment is not binding, a favorable review for Boeing "would serve as further argument for Boeing backers on Capitol Hill to push for a new deal."[92] A favorable review is just what happened on 18 June 2008. According to Michael R. Golden, the GAO managing associate general counsel for procurement law, "Our review of the record led us to conclude that the Air Force had made a number of significant errors that could have affected the outcome of what was a close competition between Boeing and Northrop Grumman. We therefore sustained Boeing's protest." The GAO went on to recommend the Air Force reopen discussions, obtain revised proposals, and reevaluate and select based on the GAO's recommendations.[93]

Congressional supporters of Boeing were elated over the GAO decision and took little time assuring constituents the fight would continue. Senator Pat Roberts and Representative Todd Tiahrt, both of Kansas, began the process to introduce legislation "mandating that the Air Force hold another competition."[94] Representative Norm Dicks warned of close congressional oversight on how the Air Force handles the GAO findings, and commented, "I'm not going to accept any decision now except a Boeing victory."[95] Boeing supporters in Congress were now armed with enough ammunition to influence a future Air Force tanker decision. A letter was sent by the Kansas delegation to Secretary Gates urging him to award the contract to Boeing without delay.

The news of the GAO report was not well received across the Atlantic. EADS chief executive Louis Gallois was disappointed with the report but remained hopeful, saying, "It's important to recognize that the GAO announcement is an evaluation of the selection process, not the merits of the aircraft."[96] EADS officials realized the report was a setback, not a death sentence. In France, the politicians were sowing the seed for another trade rift. Bernard Carayon, a member of France's UMP party, said, "The challenge to the air-refueling contract by the U.S. Government Accountability Office is a blow to our trans-atlantic relations."[97] Amid all the talk, Northrop Grumman/EADS maintained it had the superior product and remained hopeful it would eventually win out.

The GAO report even found its way into 2008 presidential politics. Senator McCain was a driving force behind the tanker lease deal investigation, which led to a second competition.

However, a couple of McCain's top advisors were lobbyists for EADS and the senator did urge DoD to ignore an ongoing trade dispute between the United States and Europe over subsidies for Airbus.[98] McCain maintained there was no connection between the two events and he was simply asking the Air Force to keep a level playing field during the bidding process. The Democrats, desiring to win the White House in the November 2008 election, saw things differently. The Democratic National Committee carried a headline saying "McCain mimicked EADS every step of the way" on a deal that "sent American jobs abroad."[99] For his part Senator Obama, the Democratic nominee, "applauded" the GAO recommendation and added that the tanker competition "must be reopened to ensure a fair and transparent process."[100]

THE SECRETARY OF DEFENSE IS FORCED TO MAKE A DECISION

Secretary of Defense Robert Gates hoped to ratchet down the rhetoric on the tanker selection process by placing the under secretary of defense for acquisition, technology, and logistics, John Young, in charge of selection oversight. Secretary Gates announced a limited competition would be held to reconsider eight areas in which the GAO found serious flaws.[101] When a decision is made on what is potentially one of the largest defense contracts in history, it is normally greeted with a series of reactions. This decision was no exception.

On 30 July the House of Representatives took an opportunity to influence the future tanker selection. The House defense appropriations subcommittee inserted language in the 2008 Defense spending bill that would impact how a second competition would be held. This language would require the Pentagon to seek a medium-sized tanker, prohibit extra credit for a larger tanker, require the new tanker to be capable of refueling all planes, and consider the total life-cycle cost over a 40-year period versus the 25 years used in the earlier competition.[102] Needless to say, Boeing was pleased, as the language, if passed, appeared to slant the competition in its favor.

Boeing, getting a second opportunity when Secretary Gates decided to have another competition, would not sit idle. Aside from lobbying Congress, executives shook up their organization by naming Dave Bowman as the new head of their tanker management division. Dave Bowman is highly regarded in Air Force circles as the manager of the Boeing C-17 program; the C-17 serves as one of the Air Force's primary cargo and troop transport jet aircraft.[103] Another concern for Boeing was the speed at which the Pentagon would complete the contract. The Boeing tanker offering was smaller and less capable in terms of passenger and cargo carrying capacity. If the new proposal from the Pentagon gave "extra credit" for a capability only filled by a larger Boeing offering, the team would need more time.[104] This point was underscored in August when Boeing threatened not to bid on the Pentagon's proposal unless more time was given to revamp its offering.[105]

The limited competition was not going as planned and during a House Armed Services Committee hearing on 10 September 2008 Secretary Gates announced the delay of the tanker competition. This would effectively delay the decision into the next administration.[106] Gates said a "cooling off" period was needed and continued by stating, "It is my

judgment that in the time remaining to us, we can no longer complete a competition that would be viewed as fair and objective in this highly charged environment." Secretary Gates's decision was obviously well received by Boeing.

THIRD TIME IS A CHARM

It would not take long for Northrop Grumman to exert pressure on the new administration of Barack Obama. On 19 November 2008 Northrop Grumman took out a full-page ad in the *Washington Post*. The ad was designed to turn up the heat on the Pentagon, claiming the first batch of 68 Airbus planes were $3 billion less expensive than the Boeing offering.[107] The ad went on to quote an unnamed "senior DOD official" as saying, "A member of the American public might conclude that Boeing sought to charge more than the Defense Department reasonably expected."[108] The senior DoD official turned out to be John Young, who was in charge of overseeing the tanker selection process. Northrop Grumman claimed it was attempting to refocus attention on the importance of the tanker situation while lawmakers and President-elect Obama's transition team were weighing weapons-buying decisions that Mr. Gates had postponed.[109]

For Secretary Gates his decision to delay was unsuccessful on two counts. Delaying the decision placed the tanker firestorm on the next secretary of defense. As it turned out, Secretary Gates signed on to another tour of duty as Pentagon chief and the tanker decision would once again fall in his lap. Second, he had thought the delay would provide a "cooling off period" allowing passions to subside so a decision could be made in a more relaxed environment. Unfortunately, the cooling-off period offered the competitors more time to reload and passions seemed to heat up. If anything, things became worse as the world economy declined. According to August Cole of the *Wall Street Journal*, "[P]olitics are almost certain to get more complicated as U.S. job losses mount."[110]

During preparations for the third competition, the World Trade Organization released an interim report in September 2009. While the report was confidential, insiders claimed the WTO ruled Airbus received illegal subsidies from European governments.[111] Illegal subsidies provided Airbus an unfair competition in the commercial airline business by making its offerings less expensive. (The final ruling, released in March 2010, determined that Airbus had received "improper subsidies.") Boeing supporters claim the findings should tip the next competition in Boeing's favor while Northrop Grumman/EADS (parent of Airbus) supporters downplayed the report, claiming nothing should be done until a pending final WTO decision is made. (Airbus has the right to appeal the March 2010 decision, which means that a final resolution could be further delayed.)

Meanwhile the Air Force began the formal process of soliciting bids from industry by releasing the request for proposal. The first offering by the Air Force was released as a draft, which the Northrop Grumman team as well as Boeing took issue. Northrop Grumman, the more vocal of the two, threatened to withdraw from the competition. Both teams attempted to influence the final RFP to improve chances for victory. Republican Senator Shelby took the additional step of using senatorial powers to place several of President Obama's

nominations on hold. Senator Shelby was very concerned over the tanker competition and jobs his home state would gain should the Northrop Grumman team win.

After considering inputs from the two competitors, the Air Force made final adjustments to the RFP and released it in late February 2010. On 8 March, Northrop Grumman announced it was withdrawing from the tanker competition, citing the RFP as favoring the smaller Boeing offering.

CONCLUSION

In 2003, it looked like a sure thing for Boeing to get the KC-X contract. Senator McCain's inquiry exposed the Darleen Druyun scandal and began a series of events that allowed EADS to increasingly position itself favorably as a contender to build the next-generation tanker. It partnered with Northrop Grumman and planned to build plants in the United States to add an American face to the company. Its successful international sales program provided significant leverage, helping it to become a serious competitor. EADS's version of the tanker is larger, requires more ramp space and longer runways, and burns more fuel, but carries more passenger and cargo.

In comparison, Boeing has much it could use to its advantage. It is an American company with a long history of providing DoD refueling aircraft and has strong allies in Congress. And with the KC-767, Boeing has what it believes to be the optimum-sized tanker aircraft for the United States Air Force. Boeing's version of the tanker is smaller, can get into more airfields, and burns less fuel per hour, but carries less cargo and fewer passengers.

The tanker fleet continues to age, placing ever-greater urgency on a final decision. The initial tanker deal resulted in two individuals going to jail. The second selection process was found to have "significant errors" by the GAO. The third competition resulted in Northrop Grumman withdrawing, claiming the RFP would force the company to take on too much risk and be less profitable. That is how things stood in mid-March 2010. After nearly a decade of unions, politicians, governments, corporations, and agencies clashing over a costly acquisition program we are left with just one company bidding for the lucrative contract. How will this play out over the next several weeks and months? Several possibilities exist, to include EADS entering the competition without the Northrop partnership, a Russian offering, the Air Force extending the RFP deadline or revising the RFP. Will Boeing try to take advantage on price now that Northrop Grumman withdrew? After over eight years of battle, delay, and hundreds of millions of defense dollars spent, will the Air Force finally begin the tanker replacement effort? Some of our transatlantic partners already are claiming foul over the bidding process and have signaled that there will be repercussions against the United States.

When French president Nicolas Sarkozy visited the United States at the end of March 2010, President Obama promised that the process to select new Air Force refueling aircraft would be "free and fair." Obama also tried to depoliticize the issue, pointedly noting that the president does not "meddle" in procurement decisions and that the process is managed by the secretary of defense. Sarkozy, in turn, said that he "trusted" Obama's assurances that

the tanker bidding process would be "fair."[112] However, Senators Sam Brownback (R-KS) and Patty Murray immediately protested that making any concessions to permit an EADS bid would be "wrong."[113] So, have we reached the end, or just started a new chapter in the tanker saga that has taken the better part of a decade to play out?

Notes

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3. Ibid.
4. Robert S. Hopkins, *Boeing KC-135 Stratotanker* (Leicester, UK: Midland Publishing Limited, 1997), 12.
5. Paul W. Tibbets, *Return of the Enola Gay* (Columbus, OH: Mid Coast Marketing, 1998), 266.
6. Hopkins, *Boeing KC-135 Stratotanker*, 28.
7. Ibid.
8. Congress, House, Survey and Investigative Staff, *A Report to the Committee on Appropriations, United States House of Representatives, on Procurement Policies and Practices, Department of Defense, January 1956,* Department of Defense Appropriations for 1957, Procurement Policies and Practices of the DoD: Hearings before the Subcommittee on Appropriations, 84th Cong., 2nd sess., 21 February 1956, 385.
9. Christopher Bolkcom, "The Air Force KC-767 Lease Proposal: Key Issues Report for Congress," Congressional Research Service Report for Congress, RL32056, (29 August 2003), 4.
10. Ibid.
11. Discussion with senior Air Force military official, 15 January 2004.
12. Bolkcom, "Air Force KC-767 Lease Proposal," 5.
13. "Economists Call It Recession," CNN/Money.com, 26 November 2001, http://www.cnn.com/2001/11/26/economy/recession.
14. "Lawmakers Consider Air Force as Boeing Commercial Plane Customer," Associated Press Newswires, 30 September 2001.
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16. Rebecca Leung, "Cashing In for Profit?" *60 Minutes*, 4 January 2005, available at http://www.cbsnews.com/stories/2005/01/04/60II/main664652.shtml?tag=mncol;lst;4 (accessed 31 March 2010).
17. George Cahlink, "Fallen Star," *Government Executive,* 15 February 2004.
18. The FY 2000 Defense Appropriations Act (P.L. 106-79, enacted on 25 October 1999) contained a provision (Section 8133) that permitted the Air Force to lease six aircraft "for operational support purpose, including transportation of the combatant commanders in chief"; Bolkcom, "Air Force KC-767 Lease Proposal," 8.
19. Bolkcom, "Air Force KC-767 Lease Proposal," 8; notes from discussion with action officers at Air Mobility Command, 14 January 2004.
20. R. Jeffrey Smith and Renae Merle, "Rules Circumvented on Huge Boeing Defense Contract," *Washington Post,* 27 October 2003, A01.
21. Discussions with action officers at HQ Air Mobility Command, Scott Air Force Base, IL, 14 and 15 January 2004.
22. Ibid.
23. Discussion with senior Air Force official, 15 January 2004.
24. White Paper on KC-767A, "The Aircraft to Begin Our Tanker Recapitilazation," HQ AMC/XPR, 10 January 2003, 3, 4.
25. Bolkcom, "Air Force KC-767 Lease Proposal," 14.
26. White Paper on KC-767A, 5.

27. Valerie Bailey Grasso, "Defense Acquisition Reform: Status and Current Issues," Congressional Research Service Issue Brief for Congress (updated 8 November 2001).
28. Senator John McCain, speaking on the Conference Report for H.R. 2996, the FY2010 Interior Appropriations Bill, on 30 October 2009, to the Senate Appropriations Committee, 111th Cong., 1st sess., available at http://www.mccain.denate.gov.
29. William Matthews, "No End in Sight," *Defense News,* 26 July 2005.
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Mine Resistant Ambush Protected (MRAP) Vehicles

SEAN C. SULLIVAN

> As you know, you have to go to war with the Army you have, not the Army you want.
> —Donald Rumsfeld, December 2004, Camp Buehring, Kuwait desert[1]

Critics of defense resource allocation processes are often disturbed by the bureaucratic nature of the system. This attitude toward defense planning is based largely on a perception of systemic lethargy and frustration over the methodical character of defense planning processes. In peacetime, these criticisms focus on abstract issues like management practices, waste, cost, and organizational competition. Planning and programming decisions take years and result in acquisition programs that are executed over a decade. Cost analysis is critically assessed within force-planning decisions. During time of war, cost is measured not only in dollars but also in lives.

Force planners tend to factor risk and hedge against new or unproven technology in their decisions and prefer choices that make measured improvements in performance. Also, subcultures develop within the services that tend to advocate for particular types of systems and equipment. This results in incremental shifts in force structure over time as new technology and equipment replace old. However, in a time of war, the experiences gained in combat place emphasis on current system performance and effectiveness against the enemy. Deficiencies in equipment effectiveness in combat are a significant risk to force planners and a threat to the continued funding of the service programs and defense contractors. Often planners focus the defense planning community on the elimination of capability gaps.

On 1 May 2003, President Bush announced the end of major combat operations in Iraq from the deck of the USS *Abraham Lincoln*.[2] U.S. policy makers anticipated a phase of security operations, reconstruction, and transition in Iraq that was predicted to proceed systematically to an independent Iraq and a stable state in the international political system. During testimony before Congress in February 2003, Under Secretary of Defense Douglas Feith stated:

> As Iraqi officials are able to shoulder their country's responsibilities, and they have in place the necessary political and other structures to provide food, security and the other necessities, the United States and its coalition partners will want them to run their own affairs. We all have an interest in hastening the day when Iraq can become a proud, independent and respected member of the community of the world's free countries.[3]

After Saddam Hussein was pulled from his spider hole where he was hiding and captured by U.S. forces on 14 December 2003 the hostilities appeared over as the former leader of Iraq was held by the new government pending trial. However, by the start of 2004, commanders in Iraq observed a growing insurgency. In January 2004, daily attacks against U.S. forces averaged 17 per day. April 2004 became the deadliest month to date in the war, with 147 U.S. military personnel killed in action. By the beginning of the summer of 2007, U.S. commanders attributed nearly 75 percent of the monthly U.S. casualties in Iraq to the improvised explosive device (IED).[4] The significance of these casualty statistics was not lost on concerned actors within the U.S. domestic political system.

Field commanders in Iraq recognized the need for vehicles with better protection as early as 2003. Their recommendations to joint and service staffs initiated programs determined to provide increased protection to U.S. forces. Despite numerous U.S. defense program initiatives and innovations, the insurgents maintained their edge in IED lethality and effectiveness.

This frustrated leaders in Congress who encouraged President George Bush to immediately place greater emphasis on force protection measures. Senator Joe Biden (D-DE) implored President Bush in 2007:

> Mr. President, whatever their views on the war in Iraq, Americans are united on this: so long as a single American soldier or marine is on the front lines, it is our shared responsibility to protect him or her with every ounce of our energy, our ingenuity, and our determination. I hope that you will lead us in the effort to give our soldiers and marines in Iraq the best protection this country can provide.[5]

With U.S. forces engaged in combat against an enemy that has demonstrated the ability to adapt tactics to achieve greater effectiveness and lethality on the battlefield, the Joint Rapid Action Cell (JRAC) process was specifically developed to meet the needs of combatant commanders within the current budget execution year. Implemented by the Department of Defense (DoD) in July 2005, JRAC is a bottom-up process where field commanders, through the combatant commander, present their urgent needs and propose potential solutions to the Joint Staff, the services, and the Office of the Secretary of Defense (OSD).[6]

Observing the effectiveness of enemy IED tactics, military leadership engaged the innovative and new JRAC process to respond to this battlefield need. The JRAC process was implemented as a DoD transformation initiative to meet battlefield operational requirements more rapidly than through the use of conventional aquisition processes. The processes involved in the MRAP purchase included both joint and individual-service acquisition processes intended to deliver capabilities to the warfighter more rapidly.

WHAT IS AN MRAP?

A Mine Resistant Ambush Protected (MRAP) vehicle is an armored vehicle with a V-shaped hull. The armor hardens the vehicle against blast, fragments, and projectiles, while the V-shaped hull deflects blasts from under the vehicle. Also the raised chassis and the use

of tires vice tracks create more space for dissipating the energy of a blast from underneath the hull.[7] These technologies increase survivability. The V-shaped hull technology is not patented. This means that manufacturing companies can produce a variety of designs.

The substantial increase in protection comes at a cost in performance and payload. MRAP vehicles are not tactical fighting vehicles that are built specifically to support mounted infantry. MRAP vehicles are not expeditionary vehicles and cannot be easily transported by naval shipping, landing craft, or cargo aircraft, due to their weight and dimensions. However, these trade-offs were acceptable to the military leadership in order to provide increased protection to ground forces. This was made clear in the Capability Production Document (CPD) for the MRAP. The Joint Requirements Oversight Council (JROC) approved the following: "MRAP's highest priority will be protection, which will require some trade-off in performance, payload, and transportability in particular. Limits on transportability will be accepted in order to accommodate the size and weight to achieve the required level of protection."[8]

AN INNOVATIVE ENEMY AND EVOLVING THREAT

In June 2004, General John Abizaid (at that time Commander, U.S. Central Command (CENTCOM)) stated that "IEDs are my number one threat," and called for a mini–Manhattan Project against IEDs.[9] The evolution of the IED threat resulted in significant U.S. effort to counter the effectiveness of this weapon. Initially, the insurgent IED threat was primarily from "roadside bombs," "car bombs," and "suicide bombers." The explosion and blast effect from these IED types against U.S. vehicles and personnel was against the side of the vehicle. At that time, the Coalition Joint Task Force operated over 12,000 unarmored High Mobility Multipurpose Wheeled Vehicle (HMMWV) and 16,000 other wheeled vehicles.[10] In response, U.S. forces developed a series of armoring systems and ultimately deployed an "up-armored" HMMWV (UAH) with significant additional armor protection. Armor kits and the UAH also provided increased protection against small-arms fire.[11]

As the armoring systems proved effective against enemy IEDs, the enemy increased the explosive capacity of the IED from 60 mm and 81 mm mortar rounds to 122 mm and 155 mm artillery shells.[12] From 2004 to 2006, the IED threat in Iraq evolved as the enemy adjusted to U.S. tactics and procedures by adjusting the construction and employment of the IED to increase its lethality.

DoD's approach to defeating IEDs was multidimensional. The approach was consistent with a DoD planning innovation that tasked planners to assess both material and nonmaterial solutions to problems. In 2004, DoD created the Joint Improvised Explosive Device Defeat Organization (JIEDDO). JIEDDO is a DoD agency that focuses on the IED threat. JIEDDO advocated a coordinated approach aimed at defeating the IED. From 2004 to 2006, JIEDDO and the services developed new IED-related tactics and convoy doctrine, electronic countermeasures, and improved armor upgrades to existing vehicles, which enhanced tactical vehicle protection. Also, tactical commanders placed greater emphasis on disrupting the insurgent networks before they are able to plant IEDs.[13]

The level of armor protection for noncombat vehicles used a three-tiered structure. A vehicle with Level I protection was manufactured with armor built into the original design of the vehicle (e.g., M1114 HMMWV). Level II protection resulted from an armoring kit of add-on armor plates and ballistic glass to vehicles that provides nearly the same level of protection as Level I vehicles. Level III protection was the product of warfighter innovation at the unit and tactical levels and consisted of various ad hoc measures. Soldiers often called this "Hillbilly armor."[14] Force planners were faced with a decision regarding protection levels, future threat, force protection requirements, and funding.

Initially, DoD countered the IED threat with armoring kits (Level II). These improvements increased survivability from IED attacks. From 2004 through 2007, DoD spent over $5 billion on improvements in protection through armoring kit and UAH programs. Seven companies produced almost 9,000 HMMWV kits by July 2004. Pentagon decisions to purchase and utilize Level II armoring kits in 2004 and 2005 reflected the nature of the threat and tactics used by the enemy at that time.

The up-armored HMMWV is an expeditionary weapon system that supports maneuver warfare. The up-armored HMMWV was adapted from an existing design to support counterinsurgency operations in Iraq. The model was the M1114 currently designed and under production by O'Gara-Hess and Eisenhardt Armoring Company, a subsidiary of Armor Holdings Inc.[15] As Brigadier General Michael Brogan, Commander, Marine Corps Systems Command, observed: "[A] decision was made to go to up-armored HUMVEES, because that would deal with the side-blast IED events that were prevalent in 2005.

"Additionally, that was a hot production line. It was producing approximately, in August of 2005, 550 up-armored vehicles per month."[16]

Congress supported these force protection initiatives in the Fiscal Year (FY) 2005 emergency supplemental appropriation (P.L. 109-13) through the addition of $150 million to the Army's request for up-armored HMMWVs. Funding totaled $618 million for Army and Marine Corps HMMWVs. The supplemental also included $611 million for armor kits, which was $48 million more than the OSD request. In the FY 2006 budget, Congress appropriated an additional $240 million for up-armored HMMWVs, and $150 million for add-on armor for light and medium transport vehicles.[17]

While U.S. losses during an IED attack improved from essentially one casualty per attack (1:1 ratio) in 2004 to one casualty per four IED attacks (1:4) by 2006, the total number of IED attacks increased over the same period. Critical of DoD efforts to meet the threat, in October 2005, Senator Carl Levin (D-MI), then the ranking member of the Senate Armed Services Committee, stated that the armoring of U.S. troops has "improved in numbers. We are almost there in terms of finally getting everybody who goes out from their post to have an armored vehicle. . . . [I]t took too long. It was a massive failure of planning for a violent aftermath, which led to a lot of these problems."[18]

However, in February 2006, a Congressional Research Service report stated that DoD efforts to counter IEDs were only marginally effective and DoD expected that mines and IEDs

would continue to be the weapons of choice for insurgents for the near term in Iraq. Additionally, the report expressed concern that IED weapons and tactics would be used by other insurgents and terrorists around the world.[19]

Further complicating the counter-IED problem was another shift in insurgent IED tactics. As insurgents buried IEDs underneath the road vice alongside the road, the lethality of their weapon increased dramatically through the use of an undercarriage explosion and through the use of explosively formed penetrators (EFPs).[20] Undercarriage explosions proved extremely more lethal against the HMMWV, as the explosion transmitted energy up against the bottom of the vehicle and inside the cabin.

The sophistication of the insurgents in Iraq also benefited from the assistance of Iran. During an interview with CNN in April of 2007, the deputy chief of staff for strategic effects, Multinational Force–Iraq, U.S. major general William Caldwell, stated, "We know that they [IEDs] are being in fact manufactured and smuggled into this country, and we know that training does go on in Iran for people to learn how to assemble them and how to employ them."[21]

RAPID ACQUISITION PROCESSES AND MRAP ACQUISITION

Initiated within OSD in July of 2005, the Joint Rapid Action Cell is a process that assesses the immediate needs of the warfighter.[22] The JRAC process complements, but does not replace, the other defense resource allocation processes, such as OSD's Planning, Programming, Budgeting, and Execution (PPBE) system and the Joint Capabilities Integration and Development System (JCIDS). Underpinning the acquisition of MRAP vehicles have been the rapid acquisition process and the associated analysis by the services and Joint Staff. Initially in early 2006, the Marine Corps utilized its own rapid acquisition system called the Urgent Universal Need Statement (UUNS) Process to forward an urgent requirement for MRAP vehicles.[23]

In May 2006, the Multi-National Force–West commander in Iraq submitted a request for 185 MRAP vehicles. A follow-on request, two months later, added another 1,000 vehicles, for a total of 1,185. In October of 2006, CENTCOM consolidated requests from commanders in Iraq and submitted a joint urgent operational need (JUON) statement to the Joint Staff, which engaged the JRAC process. At the Army–Marine Corps Board in November 2006, the Army identified a need for 2,500 vehicles. The total number of MRAP vehicles needed by the military grew to 7,774 by May 2007.[24]

Per the JRAC process, the JUON statement was reviewed by the JCIDS gatekeeper, Deputy Director J-8, Joint Staff. On 8 February 2007, the decision was made to assign the Marine Corps as sponsor; Commander, Marine Corps System Command as joint program executive officer; and the Department of the Navy as executive agent.[25]

The JRAC process capitalizes on the JCIDS Functional Capabilities Boards (FCBs) by using these analytic boards to assess the JUON using a capabilities-based approach. The MRAP was assigned to the Protection FCB in February. The JROC approved the Marine

Corps CPD in April of 2007. This JCIDS document developed a concept of operations for the MRAP, established key performance parameters (KPPs), assessed costs and cost drivers, and assessed operational vignettes for MRAP employment in theater. This CPD continues to serve as the analytic baseline for the MRAP program.[26]

In 2007, over 70 percent of U.S. military casualties were attributed to the IED. The casualty figures led to increased scrutiny of DoD actions and decisions by Congress and the American people. The executive director of the Iraq and Afghanistan Veterans of America, Paul Rieckhoff, stated, "[T]he suits and the bureaucrats in Washington don't seem to have the same sense of urgency as the guys in the field.

"This is what happens when industry isn't put on a war footing. . . . It's like the military families are at war, and everyone else is out shopping."[27]

OSD officials and military commanders in the field were all disturbed by the statistics and this resulted in increased interest in the force protection characteristics of MRAP vehicles and their performance versus the threat. MRAPs are not expeditionary tactical vehicles, but MRAPs were valued by the Department of Defense as a counterinsurgency weapon system with specific tactical advantages in the fight in Iraq as it evolved by 2007. These characteristics were attractive and resulted in a multiple method approach to counter IEDs in Iraq.

General James Conway, commandant of the Marine Corps, considered getting MRAP vehicles to forces in Iraq as a "moral imperative"[28] and, back in 2007, identified the MRAP program as his "number one unfilled warfighting requirement," pointing out: "We know MRAP saves lives. We have yet to have a Marine killed (in a[n] MRAP). It can take a much heavier blow."[29] Conway's view was shared by both senior DoD leaders and members of Congress.

In a 2 May 2007 memorandum from Defense Secretary (SECDEF) Robert Gates, the MRAP program was designated as the "highest priority Department of Defense acquisition program."[30] Later that month, Senator Biden urged President Bush to make the MRAP program "a national priority" and offered to assist the executive branch with additional funding for the vehicles and new legislative authority to expedite the program.[31]

THE MATURATION OF THE MRAP PROGRAM

The increase in the number of MRAP vehicles needed resulted in an increase in program aquisition costs and OSD designated the MRAP program as a Major Defense Acquisition Program[32] and assigned the program a "DX" Industrial Priority Rating.[33] A "DX" priority requires contractors to fill DX material orders before other orders. The potential for further growth existed. At that time, Army planners assessed that an MRAP acquisition program could result in a total requirement of over 20,000 vehicles, which would raise the total cost of the program to $22 billion.

The growth of DoD's MRAP order presented a significant challenge to the manufacturers of these vehicles. In 2007, DoD contracted with nine companies for prototypes. The prototypes were tested at the Aberdeen Proving Ground in Maryland. Based on the testing,

seven of the nine companies provided models of MRAP vehicles that met military performance requirements. The companies competed for $8 billion worth of contracts for 7,774 vehicles and vehicle orders were divided among the companies based on their manufacturing capacity. The locations of these companies and manufacturing facilities were dispersed across the United States.

There were two significant associated challenges for MRAP contractors and DoD. The MRAP order appeared to exceed the combined manufacturing capacity of all U.S. MRAP contractors. Also, the MRAP program requires large amounts of armor-quality steel and specific rubber for the tires. This drew into question the industry's ability to manufacture the 1,200 vehicles per month required by DoD to meet desired deployment schedules.

The Defense Contract Management Agency estimated industry capacity for MRAPs at only 900 vehicles per month.[34] OSD accepted the risk in production numbers and contracted for a capacity of 1,200 vehicles per month. Under Secretary of Defense (AT&L) John Young testified before Congress in July 2007 that the MRAP production rate would accelerate from 82 vehicles in June to 489 vehicles in October to approximately 1,300 vehicles per month in December.[35] MRAP production rates included the combined production of several contractors.

During 2008, in an effort by OSD to limit the number of different types of MRAP vehicles within the force, three vendors[36]—International MaxxPro (IMG), Force Protection International, and BAE Systems—were selected to execute the FY 2008 authorization of 15,858 vehicles.[37] During FY 2008 and FY 2009, MRAP production sustained the target monthly vehicle production rate of 1,200 through a combination of U.S. government industrial policy actions (e.g., DX rating), and coordination among the MRAP Joint Program Office, Marine Corps Systems Command, Army Tank-Automotive and Armaments Command (TACOM), Defense Contract Management Agency, and the market influences and commitment of the defense contractors.

Prior to full-rate production, DoD assessed the ability of existing transportation systems to deliver MRAPs to warfighters in theater. This was no small task, as MRAP vehicles were manufactured or assembled in Mississippi, Texas, Wisconsin, Pennsylvania, South Carolina, Ohio, Illinois, and Florida.[38] U.S. Transportation Command (USTRANSCOM) was responsible for this task and planned and executed the process. The delivery process was relatively no less expensive than MRAP program production costs.

SECDEF tasked USTRANSCOM with the delivery of 1,500 MRAPs in theater by 31 December 2007. USTRANSCOM first utilized airlift from Air Mobility Command to transport MRAP vehicles to theater. This included military aircraft, the C-17 and the C-5, as well as commercial cargo aircraft. USTRANSCOM assessed that airlift alone could not sustain MRAP transportation requirements as the volume of delivered vehicles reached full production. C-5 and C-17 aircraft could transport only two or three vehicles, while the Russian AN-124 Condor could move as many as six vehicles.[39]

In December 2007, Military Sealift Command (MSC) began the use of LMSR (large, medium-speed roll-on/roll-off) ships to transport MRAPs. Prior to the use of shipping, MSC studied MRAP seaborne transportation. Built in the 1990s, LMSRs were designed to carry conventional U.S. military equipment. Although the dimensions and weight of MRAP vehicles were dissimilar to those of existing conventional military equipment, LMSRs were able to transport approximately 175 vehicles. "In one load, ships can carry what takes almost a month to deliver by air," said Tom D'Agostino, director of ship operations in the Sealift Logistics Command Atlantic Office.[40] Sealift ships deliver MRAPs from the United States to theater in 22 to 30 days.

USTRANSCOM met SECDEF's direction for the delivery of 1,500 MRAPs by the end of 2007 and, by April 2008, 5,000 MRAP vehicles were delivered to CENTCOM.[41]

MRAP manufacturing plants produced vehicles that were operational but not tactically ready for combat operations. Prior to shipment to theater, MRAP vehicles need C4ISR installations and other systems and weapon-mount installations. Space and Naval Warfare Systems Center (SPAWAR SSC) in Charleston, SC, was tasked by DoD as the MRAP systems integrator. This organization grew to 400 employees, who in a matter of a few days install and test systems on the MRAP vehicles before transferring the MRAPs to USTRANSCOM for delivery.[42]

There were also considerable risks involved in the MRAP acquisition. First, testing the systems during acquisition presented risk in meeting performance specifications. In early 2007, the Marine Corps established two locations to test MRAP performance and survivability. Testing was conducted on vehicles from multiple manufacturers at the Aberdeen Proving Ground in Maryland and the Yuma Proving Ground in Arizona. The two-phase testing process included evaluations of steering, handling, and explosion survivability. The test included the use of human models that collected data on the impact of the explosions on the human head, neck, spine, pelvis, and legs.[43]

Testing was conducted every day using three shifts for several months at both sites. In August 2007, Brigadier General Brogan (Commander, Marine Corps Systems Command) evaluated the results of the MRAP models that passed the field tests as follows: "From a performance standpoint, in protecting troops it's done a tremendous job so far. From an operational reliability standpoint, it has exceeded our requirements."[44]

Second, the program purchased vehicles from many different contractors and the fleet of vehicles has many different designs that complicate comparative performance assessments, maintenance, and logistics. Recognizing these significant challenges in December 2006, the MRAP program office tasked Marine Corps Logistics Command (LOGCOM) with responsibility for MRAP logistics integration. Chris Berry was hired in 2006 as the MRAP program manager (Program Support Division) and has worked with industry and LOGCOM on the MRAP support issue. He stated in October 2009:

> To support the MRAP it's not like going to a car dealership where you can get all the parts. . . . Normally we have the time to establish that sort of thing all ahead of time. But the MRAP program was established quickly and the logistics chain was established

> afterwards. LOGCOM contributed hugely with expertise that helped to conceive an idea of how we could do the fielding of the vehicles and the logistics chain simultaneously and not go through the normal four or five year process.[45]

The collaborative efforts of the services' logistics commands and technical representatives from the contractors resulted in a 95 percent readiness rate for all MRAP vehicles between 2007 and 2010.[46] Also, company representatives were contracted to operate in theater and conducted a wide range of logistics and maintenance tasks as the military built an organic MRAP logistics and maintenance capability.

MRAP funding was also an issue. Currently, operations in Iraq and Afghanistan receive supplemental funding by Congress. However, supplemental funding can be politically contentious. The JRAC process and congressional emergency supplemental funding of the war in Iraq are complementary. Supplemental funding is the intended source for funding an urgent wartime operational need. The JRAC process identifies, prioritizes, analyzes, and validates a material solution to an urgent wartime need and Congress then applies supplemental funding to the solution within that budget year.

There are benefits to a relationship between JRAC and supplemental funding. Defense programmers can fund the solution through the supplemental and are not forced to reprogram funds from other defense programs. Additionally, congressional leaders can link the supplemental funding to tangible enhancements that provide timely benefit to U.S. service members in combat. In 2007, questions surfaced on the potential of the MRAP vehicles to be considered as the replacement of the HMMWV fleet. This resulted in service evaluation of the MRAP purchase against the need for "reprogramming" funds from other acquisition programs.

The Department of Defense already had a program to replace the HMMWV. The Joint Light Tactical Vehicle (JLTV) program was initiated in FY 2005. The program is the product of detailed strategic, operational, and tactical assessments as well as capability validation that resulted in approved program cost, schedule, and performance measures. Now that MRAP vehicles may replace all HMMWVs in theater, the relationship between the MRAP and the JLTV programs, each involving billions of dollars, is unclear. The contract for the JLTV has not been awarded to a defense contractor. In February of 2009, General Dynamics, BAE Systems, and Lockheed Martin were awarded developmental contracts and will proceed in their JLTV prototype development.[47]

Weighing half as much as an MRAP, the JLTV is designed to be carried in a C-130 aircraft, and a CH-47 helicopter can move a JLTV via external sling load. These intratheater mobility features were programmed into the JLTV. As Lieutenant General Stephen Speakers, deputy Army chief of staff for programs, noted: "We have some important questions that we'll have to answer. How much can we pull the Joint Light Tactical Vehicle program forward? Can we get the combination of performance, payload and protection all of us want in a more manageable package? None of us want a vehicle that weighs between 40,000 and 60,000 pounds."[48]

Conceived in 1999, the Army Future Combat System (FCS) was intended as a transformational program for the next generation of Army forces. The Army Future Combat System includes a family of vehicles within the program and a joint networked command and control system. As Andrew Feickert noted:

> The Future Combat System (FCS) is the Army's multiyear, multibillion-dollar program at the heart of the Army's transformation efforts. It is the Army's major research, development, and acquisition program for the foreseeable future and is to consist of 14 manned and unmanned systems tied together by an extensive communications and information network. FCS is intended to replace such current systems as the M-1 Abrams tank and the M-2 Bradley infantry fighting vehicle.[49]

In early 2008, DoD estimated the total cost of the FCS program at $159.3 billion.[50] Boeing and SAIC were contracted as the lead integrators for the program.[51] In 2009, Secretary Gates in his FY 2010 budget brief recommended the cancellation of the FCS vehicle program:

> I have concluded that there are significant unanswered questions concerning the FCS vehicle design strategy. I am also concerned that, despite some adjustments, the FCS vehicles—where lower weight, higher fuel efficiency, and greater informational awareness are expected to compensate for less armor—do not adequately reflect the lessons of counter-insurgency and close quarters combat in Iraq and Afghanistan. . . . [FCS] does not include a role for our recent $25 billion investment in the MRAP vehicles being used to good effect. . . . I am troubled by the terms of the current contract, particularly its very unattractive fee structure that gives the government little leverage to promote cost efficiency.[52]

The MRAP continued to impact other ground vehicle programs. Although the Marine Corps Expeditionary Fighting Vehicle (EFV) was designed for amphibious operations, individual members of Congress and the House Armed Services Committee have expressed interest in the potential to include V-shaped underbody construction in the EFV that can withstand an IED blast from under the hull.[53]

The concern over the IED threat caused the Marine Corps to conduct IED explosive testing on the EFV in 2010 and General Conway reported "almost MRAP" levels of survivability. The Marines estimate the cost of the EFV program's 573 vehicles at $12 billion, with low-rate initial production scheduled to begin in 2013.[54] The program is under intense scrutiny regarding performance and there is risk to the program's continued funding if anti-IED design changes are required in the EFV.

IMPACT ON DEFENSE PLANNING

The link between a rapid acquisition process and the long-range DoD planning processes is important and beneficial. There are significant advantages to using established DoD processes and defense planning organizations for analysis and decision. Formal DoD processes have established standing analytical boards and working groups.[55]

These boards and working groups include military and civilian experts with significant experience who routinely track current trends and technologies. These processes create analytic studies, reports, and documents in formats that are standardized and understood within DoD. These products guide the acquisition process.

JCIDS provided joint oversight and coordination of the MRAP program. Service programmers and acquisition professionals provided management of the program's cost, schedule, and performance, ensuring that long-range strategic objectives remain linked to force structure and that budget funding streams are sufficient.

JCIDS established and maintains JROC oversight of the MRAP program. As the MRAP vehicle quantity increased, based on the assessments of the vehicle's utility, performance, and need, service and FCB planners continued their collaboration under the oversight of the JROC. Recognizing the need to control additional system growth within the MRAP program, the JROC retained exclusive authority over important MRAP performance requirements known as key performance parameters.[56]

Over the past four years, the Department of Defense has made a significant investment in the family of MRAP vehicles. Through FY 2010, MRAP funding totals $32.2 billion.[57] The United States has contracted for 25,000 vehicles and in January of 2010, the JROC approved a requirement that would increase the MRAP fleet to 26,882 vehicles.[58] MRAP is just one type of Tactical Wheeled Vehicle (TWV). With a view to the future, the Army and the Marine Corps initiated independent TWV studies in 2008. In 2009, DoD concurred with the recommendations of a Government Accountability Office report and the department will develop a unified comprehensive long-term TWV strategy that will inform future force planning and resource allocation decisions.[59] In March 2010, Secretary Gates testified before Congress:

> The FY 2011 budget also supports the development of a new ground-vehicle program to replace aging systems. The new program will take into account the hard battlefield lessons of recent years, especially with respect to threats posed by improvised explosive devices (IEDs), and will include a role for the MRAP and M-ATV vehicles that have been so important in Afghanistan and Iraq.[60]

M-ATV—AN MRAP FOR OPERATION ENDURING FREEDOM

On 13 November 2008, the MRAP Joint Program Office issued a solicitation for MRAP All-Terrain Vehicles (M-ATVs) from the Army Contracting Office. In this document, called a request for proposal (RFP), DoD announced the plan to acquire the M-ATV and provided the opportunity for defense contractors to develop prototype vehicles for a competitive bid to manufacture between 2,080 and 10,000 M-ATVs.[61]

Operations in Afghanistan proved to be different from those in Iraq due to geography, terrain, infrastructure, and enemy tactics. Additionally, the number of IED attacks in Afghanistan increased by 350 percent from 2007 and the casualty rates to IED attacks have also increased.[62] This caused defense planners to review the utility and performance of

existing MRAP vehicles for tactical operations in Afghanistan. The M-ATV program was a spin-off of the JLTV program. The M-ATV is a lighter, off-road, and more maneuverable vehicle that incorporates existing MRAP levels of protection.[63] One news report noted: "'The M-ATV is designed to have the same level of protection as the previous MRAPs, but with the mobility of a Humvee,' says Steve Field, spokesman for BAE Systems, one of several competing manufacturers designing this vehicle of the future." The M-ATV design includes the V-shaped blast-dispersing hull but includes a significantly increased power-to-weight ratio and a lower center of gravity for increased maneuverability and to prevent rollovers.[64]

M-ATV was a new design. It weighs about half of the weight of previous MRAPs. The M-ATV was not the only alternative considered by DoD. In April of 2009, the Marine Corps partnered with Force Protection Inc. and Oshkosh Truck Co. to install a new suspension system on existing MRAP vehicles intended to increase their performance in Afghanistan. The Marine Corps sought to capitalize on existing investments in MRAP vehicles, their availability due to the drawdown in Iraq, and the potential to meet a warfighter need without the cost and time required for a new vehicle. The Marine Corps estimated retrofit costs at $169,000 per vehicle, while M-ATV costs are approximately $500,000 for the vehicle and almost another $400,000 in technology and integration. The MRAP retrofit alternative called into question the 5,244 M-ATV requirement that was validated by the JROC in June 2009.[65]

The MRAP retrofit program was the first time that Force Protection Inc., the manufacturer of the Cougar vehicle, and Oshkosh, the manufacturer of 7-ton trucks, collaborated on a vehicle design.These defense contractors developed a step-by-step retrofit procedure for mechanics that could be accomplished in six to seven days. The Marine Corps conducted field-testing of these new vehicles during predeployment training exercises for Marine units headed to Afghanistan.[66] Explosive testing was conducted by the Marine Corps and the results were satisfactory. The retrofit resulted in more space and surface area underneath the vehicle and a potential vulnerability. However, this complication did not result in explosion test failure and cancellation of the retrofit process. In an address at the Center for Strategic and International Studies, General Conway estimated that the retrofitted MRAPs would arrive in midsummer to Marines in Afghanistan.[67]

In January 2009, four separate teams of manufacturers submitted bids and samples for the M-ATV. This included Navistar, a Force Protection Inc. and General Dynamics team, Oshkosh, and a BAE General Dynamics (Canada) team. Learning from MRAP acquisition decisions past, the department decided that the M-ATV would be supplied by one contractor. In February 2009 prototypes were delivered to the Aberdeen Proving Ground for evaluation and testing scheduled for June 2009. In early April, Navistar filed a protest regarding an unspecified technicality in the government's evaluation and subsequently withdrew its bid in mid-April.[68]

On 30 June 2009, TACOM announced that Oshkosh was awarded a $1.1 billion contract for 2,444 M-ATVs. Subsequently DoD contracted Oshkosh for a total of 5,244 M-ATVs for $3.3 billion. For tactical and operational reasons, DoD required that delivery of the M-ATVs to Afghanistan commence by December 2009.

Oshkosh was a loser in its 2007 bid to build MRAPs for the military and the company was aggressive in positioning itself in the M-ATV contract competition. Oshkosh's chairman and CEO, Robert G. Bohn, stated: "Due to the urgent need of our Armed Forces for a survivable and highly mobile vehicle, our corporation's number one priority is meeting the Department's accelerated delivery schedule of the Oshkosh M-ATV. Oshkosh Corporation will put whatever resources are necessary to meet or exceed the government's delivery schedule."[69]

On 1 December 2009, President Barack Obama announced the deployment of an additional 30,000 military personnel to Afghanistan. The "Afghan surge" was scheduled to begin in January 2010 and was intended to last 18 months.[70] During testimony before the House Armed Services Seapower and Expeditionary Forces Subcommittee and Air and Land Forces Subcommittee, General Brogan discussed the progress of the M-ATV program. He testified that the program and delivery plan were ahead of schedule, with DoD accepting over 4,600 vehicles from Oshkosh, and over 1,200 vehicles have been delivered by USTRANSCOM to Afghanistan by March 2010. The contract contains provisions for up to 10,000 vehicles and the contract was increased to 8,104 vehicles.[71]

HOW WILL DOD JUDGE WHEN THE MRAP IS NO LONGER NEEDED?

In June 2007, DoD considered potential changes in the operational environment or shifts in enemy tactics that would impact the effectiveness and relevance of MRAP vehicles. The Joint Staff established a system of periodic reviews during the MRAP acquisition process where defense planners evaluate the program's unit quantities against the current tactical need for the vehicle. These reviews utilized formal defense planning processes such as PPBE, Joint Strategic Planning System, JCIDS, and JRAC and involved OSD, the services, Joint Staff, and combatant commands. The reviews led to technical and tactical improvements in the MRAP program, as well as addressed logistics and supply support. The MRAP program produced many acquisition process lessons learned regarding development, testing, government to contractor relations, cost control, systems integration, and transportation.

U.S. forces in Iraq are decreasing and combat forces are scheduled to redeploy from Iraq in the summer of 2010. There are over 16,000 MRAPs in CENTCOM. The disposition of the MRAP vehicles is under review with a disposition plan pending. DoD leadership sees a role for the MRAP in the future ground combat force structure and MRAPs are part of the DoD process that will deliver a tactical wheeled vehicle strategy for the armed forces. There are alternatives for disposition of MRAP vehicles. These alternatives include shipment of the MRAP fleet to military units in the continental United States, transfer to foreign militaries, and contracting for afloat prepositioning.

Congressional supplemental funding has been the source of MRAP program costs. Another event that will lead to an MRAP disposition decision is the end of Overseas Contingency Operations funding within the federal budget.

CONCLUSION

In MRAP acquisition, the JRAC process, JCIDS, and PPBE engaged defense leadership who were able to consider national strategic objectives and the challenges presented by future operating environments and place the program's cost in context with anticipated budget resources. Strategy and projections regarding future operations provide the foundation for force structure and allow planners to make rational defense planning decisions on specific acquisition programs that provide relevant capabilities to the joint force.

Many observers of U.S. defense planning processes hold a common perception that these systems are overly bureaucratic and mired in a quagmire of administration that impedes the progress of innovation and creativity. In the case of the MRAP, what started as a small commercial off-the-shelf (COTS) acquisition program of 185 armored vehicles for the Marine Corps in 2006 expanded to a Major Defense Acquisition Program of potentially over 30,000 vehicles at a funding level estimated at over $30 billion by 2012. This growth was analyzed and managed using numerous formal DoD processes with validation decisions made by cognizant DoD, Joint Staff, and service analytical bodies and authorities. The 2010 Quadrennial Defense Review concluded: "The Department must not only prepare for those threats we can anticipate, but also build the agile, adaptive and innovative structures capable of quickly identifying emerging gaps and adjusting program and budgetary priorities to rapidly field capabilities that will mitigate those gaps."[73]

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The Ayatollah versus the Ambassador: The Influence of Religion on Politics in Post-Saddam Iraq

NIKOLAS K. GVOSDEV

> [Ambassador L. Paul] Bremer's original political plan . . . had been done in by a half-page fatwa written by an old man in Najaf.[1]

When the United States swept aside Saddam Hussein and his regime in spring 2003, Americans had some very clear ideas about the type of Iraq they wanted to reconstruct. While they expected resistance from those associated with the old order—the "former regime elements"—there was an expectation that anti-Saddam Iraqis, most notably among the country's Shia population, would work closely with the United States. But U.S. plans for Iraq's political transition ran up against unforeseen opposition—led by someone who used both religious authority and an appeal to Iraqi nationalism to mobilize his supporters.

One day in late June 2003, in a modest house in the southern Iraqi city of Najaf, a reclusive cleric penned a short fatwa—a legal ruling based on his assessment of Islamic law—in response to concerns brought to him by his aides about media reports that U.S. and British experts would be writing the new Iraqi constitution—which would then be ratified by a constitutional council of Iraqis that would be appointed by the Coalition Provisional Authority, not elected by the Iraqi people. Sayyid Ali al-Husayni al-Sistani declared that only elected representatives could draft the constitution, because otherwise "[t]here is no guarantee either that this assembly will prepare a constitution that serves the best interests of the Iraqi people or express their national identity whose backbone is sound Islamic religion and noble social values." (See the appendix for the full text of the decree.)

Sistani occupied the highest position for Shia Muslims who looked to the *hawza*—the seminaries of Najaf where the most senior Islamic scholars and their students gather—for guidance in how to follow the teachings and principles of Islam. In practice, this meant nearly all the Shia Muslims of Iraq, who comprised nearly 60 percent of the population of Iraq. Sistani, who held the title of grand ayatollah, was considered to be the first of the *marja taqlid*—which literally means the "source of imitation"—and therefore understood to be the highest authority when it came to understanding and interpreting Islamic precepts, at least among the Shia. (Some compare the structure of authority among the Shia in Iraq to that of the Roman Catholic Church, with Sistani occupying the position of a pope—who is

considered to be infallible when issuing decrees touching on faith and morals—and other ayatollahs equivalent to the cardinals.)

Yet Sistani had written his decree not in an elaborate theological language but in simple terms that could also appeal to non-Shia Muslims in Iraq. Sistani stressed the right of Iraqis to self-determination and the importance of preserving the country's Islamic identity—themes that could and did resonate among Sunni Arabs and Kurds as well.

Sistani's fatwa was distributed by lower-ranking clerics and students throughout the *hawza* and to mosques all throughout Iraq, as well as to the print and broadcast media. Yet the head of the Coalition Provisional Authority (CPA), L. Paul (Jerry) Bremer, and his staff were slow to appreciate the ramifications of this decree for their plans to oversee the political transition in Iraq. Bremer and many members of his staff, particularly those assigned to work on the political transition, did not speak Arabic and had little background in Iraqi politics or culture. Moreover, Sistani did not seem to be a formidable political figure. He was a recluse, an elderly man of Iranian origin who was not seen as particularly relevant to the transition. Retired Ambassador Hume Horan, who served as an advisor to Bremer on Arab and Middle East affairs, referred to Sistani and the other Shia clerics based at Najaf as "these shaggy fellows" and cited their "otherworldliness" and detachment from current events.[2]

As Rajiv Chandrasekaran, the Baghdad bureau chief for the *Washington Post,* put it,

> People familiar with the discussions among U.S. officials about the fatwa said American political officers were too isolated to grasp the power of the edict right away, assuming that secular former exiles backed by the U.S. government would push Bremer's plan. Even when Sistani's clout became clear, they said Bremer remained reluctant to rework his transition plan right away. "He didn't want a Shiite cleric dictating the terms of Iraq's political future," one U.S. official with knowledge of the process said.[3]

As Bremer himself noted in his memoirs, he had a clear mandate from President George W. Bush to build an entirely new Iraqi political structure—one that would be a model of Western-style liberal democracy for the entire Middle East.[4] Observers noted that what Bremer and the CPA were attempting to do was a "root and branch transformation of the country in our own image."[5] There was a real reluctance to want to compromise on those plans or to give influence over the process to someone like Sistani. The preference, therefore, was to ignore him.

Moreover, the edict triggered no alarm bells among the CPA staff—there was no situational awareness of a potential problem. Only as Ambassador Bremer continued recruiting members for the Governing Council (*majlis al-hokum*) did the impact of the fatwa begin to register. Exile politician Ahmed Chalabi alerted Bremer to its importance when they met on 3 July. But one of the most forceful warnings came from Sayyid Mohammed Bahr al-Uloum, an exiled Shia cleric who was the last person Bremer selected to sit on the Governing Council. Uloum bluntly told Bremer that he would be unable to oppose the fatwa of

Sistani and said he could not recommend any course of action that would contradict Sistani's position.[6]

Bremer and his staff spent months trying to ignore or minimize the fatwa, and proceeded with plans for a political transition in Iraq. Sistani's steadfast opposition, however, prevented Bremer from implementing his proposals, and the Governing Council, instead of endorsing Bremer's views, ended up deferring to Sistani. By November, Bremer had changed tack. On 10 November, he addressed a letter to Defense Secretary Donald Rumsfeld (with copies to Secretary of State Colin Powell and National Security Advisor Condoleezza Rice), noting, "I have concluded the time has come to readjust our planned program for Iraq's political transition."[7] Subsequent interventions by Sistani would force more changes in U.S. plans for Iraq's transition. Noah Feldman, the law professor who served as the senior constitutional advisor to the CPA, would declare that Sistani proved to have played the "most significant role in Iraqi politics during the period of occupation."[8]

Why had Bremer and his staff not anticipated the authority and influence of Sistani? And why, even after the initial fatwa had been issued, did the CPA not understand its significance—and the ramifications for its own vision of how to proceed with the transition in Iraq? Why was the grand ayatollah not on the radar screen?

PREINVASION ASSUMPTIONS

When it became clear that the U.S. government under the Bush administration was serious about pursuing regime change in Iraq, there was considerable discussion in both government and nongovernmental circles in Washington about the shape of things to come after the fall of Saddam Hussein. Despite all of the debate, no one seems to have predicted the role that would be played in postwar Iraq by Sistani. This is perhaps due to several overriding assumptions that most Americans had about the nature of Iraqi society.

The first assumption was that the influence of the Shia religious establishment would be circumscribed because Iraq was a modern, educated, secular society.[9] One of the strongest proponents of this view was Deputy Secretary of Defense Paul Wolfowitz, who consistently argued that Iraqis, especially the Iraqi Shia, would embrace secularism and democracy after the overthrow of Saddam Hussein.[10]

A second assumption was that because Iraqi Shia religious leaders, for the most part, had rejected the Iranian approach to mixing religion and politics, they would not raise objections to a secular democracy and that ideas such as separation of "mosque and state" might even be possible to introduce into post-Saddam Iraq. After all, when Ayatollah Ruhollah Khomeini, who ended up leading the Islamic Revolution, lived in Najaf during his exile from Iran, "relations between Khomeini, with his background of radical teaching and supporting violence, and Najaf's clerical establishment, which eschewed both, were frosty from the start."[11]

Naval War College professor Ahmed Hashim notes that there existed a type of "'Shi'aphilia' among certain academics, Iraqi political exiles, policy wonks and

policy-makers linked to the Bush administration" that led them to conclude the clerical establishment would be supportive of liberal ideas and democracy (as understood in the West).[12]

The third assumption was that political parties would emerge to lead the process, as they had in the transitions to democracy in Eastern Europe, Africa, and Latin America, solidified around the professional middle classes (business figures, lawyers, writers, etc.). Some U.S. policy makers had strong expectations that leaders of exile Iraqi groups would be able to quickly identify followers and supporters in Iraq upon their return to the country following the ouster of Saddam Hussein and rapidly build up political constituencies.

Iraqi exile politicians also moved, in the months before the 2003 invasion, to downplay the importance of Sistani for the political process. When a fatwa was issued in Sistani's name in September 2002 calling on all Muslims to defend Iraq from aggression, the London-based secretary-general of the Islamic Household Centre, Mohammed Bahr al-Uloum, argued it must be a forgery because Sistani was not "known to issue political fatwas."[13] The leading Iraqi Shia exile party, the Supreme Council for the Islamic Revolution in Iraq, also cast doubts on the reliability of the decree. "We are not really sure that this fatwa was made by his eminence because his office has not issued it," declared Hamid al-Bayati, a spokesman for the group.[14] The implications were either that Sistani was not politically involved or that he was easily manipulated by whoever was in power in Baghdad.

These assumptions found their way into the State Department's prewar planning for a post-Saddam Iraq, the "Future of Iraq" project, which brought together Iraqi exiles and U.S. experts.[15] Sistani appears nowhere in the documents as a likely political force. The paper dealing with a likely interim administration put forward the idea of forming a "sovereignty council" comprised of Iraqi exiles. An early draft included such Shia clerics as Sayyid Mohammed Bahr al-Uloum and Sayyid Abdul Majid al-Khoei, the son of a late grand ayatollah who headed the Imam Al-Khoei Benevolent Foundation. Both of them had played key roles in the failed 1991 uprising among the Iraqi Shia, had left the country, and had become leaders of the exile community. In many ways, they were seen more as political figures than as representatives of the *hawza*. Khoei, in particular, was viewed as the leader of the "Shia independents," while Uloum was described as the most respected Iraqi Shia cleric outside of Iraq. Yet the report did not explain how Shia in Iraq might evaluate their leadership. A proposal for an "advisory council" only mentioned bringing in tribal and religious leaders from across Iraq but did not specifically name Sistani or identify the importance of the Shia religious structure for legitimizing any new government in Iraq.[16]

The report prepared by the Democratic Principles Working Group contained few references to the power of organized religion inside of Iraq. Instead, it counseled that most Iraqis would not accept religious scholars having a role in political life and that Iraqis would choose to "keep matters of politics separate from those of religion." There were no warnings about the power that could be mobilized by Shia clerics or any assessment that religious authorities might enjoy popular support. It seemed to assume that the secular outlook of the exiles would be reflected by a majority of Iraqis inside the country.[17]

The problem was that the assumptions about the likely role of religion in a post-Saddam Iraq rested on faulty data. The expectations of a largely secular Iraq were based on memories of the Iraq of the 1970s—a reasonably prosperous, developing country that was flush with oil revenues. By the first decade of the twenty-first century, the impact of the last several decades—the destruction wrought by the Iran-Iraq War and the Gulf War and then the degradation of society caused by crippling economic sanctions—had eroded the sense of well-being among many Iraqis. As the research of Ronald Inglehart and Pippa Norris has shown conclusively, under such conditions people turn to religion in order to provide meaning. They note: "[T]he core idea of human security, irrespective of the specific nature of the risks, is one that is widely recognized as important to well-being, and we regard the absence of human security as critical for religiosity."[18]

Indeed, Americans didn't expect the degree to which civil society had been destroyed and to what extent there had been an erosion of the secular technocratic classes who were seen as the linchpin for any transition.[19] In the aftermath of the invasion, the continuing instability led to a further exodus from among the "educated middle class . . . taking with them the skills and the more secular ideas necessary for rebuilding a destroyed society."[20] (Military officers serving on the ground in Iraq, however, rapidly came to appreciate the power and influence of the clergy, turning to them in the early days after the fall of Saddam Hussein to restrain their communities from engaging in looting.)[21]

Americans also failed to put the so-called moderation of the Iraqi Shia establishment into context. It is very true that Khomeini's ideas were rejected by the majority of Iraqi Shia. Indeed, Khomeini published his lectures on Islamic governance in 1968 precisely to signal his opposition to the majority position taken by the Iraqi Shia leadership. This is where he expounded on his novel idea of "guardianship" (*Velayat-e Faqih*)—the notion that government needs to have a guardian versed in Islamic law who can keep the political administration in line with Islamic precepts and has the power to actively intervene to set policy. In contrast, the more traditional or "quietist" school of Shia Islam argued that clerics needed to remain outside of politics to serve as moral advisors to society and should not get involved in day-to-day affairs of society unless specifically asked to make a ruling (hence the term "quietist," meaning the *hawza* should be quiet and not get involved).

Khomeini's thinking did find some adherents who wanted a "speaking" *hawza*, among them a leading Iraqi Shia ayatollah, Muhammad Sadeq al-Sadr (who would be murdered by Saddam Hussein's agents in 1999 and whose son, Moqtada al-Sadr, would assume his mantle after 2003). But there was no major change in the position of the *hawza* in Najaf even after Khomeini returned to Iran to lead the Islamic Revolution, and the failure of Iran to win support from Iraqi Shia during the 1980–88 Iran-Iraq War was taken as proof that Iranian ideas had little resonance among Iraqi Shia.

But a rejection of Iranian-style theocracy and direct involvement of the clergy in government by Sistani did not translate into an embrace of Western liberal democracy. Sistani accepted the premise of the quietist school that governance ought to be left to the politicians—but the clergy still had a right to provide guidelines for social order

(*nizam al-mujama*). In other words, Sistani did not feel that the clergy ought to rule—but that the politicians running affairs would accept clerical guidance.[22] A phrase that Sistani and other clerics used to justify their involvement in political affairs was "*irshad wa tawjeeh*"—"guidance and direction." As one Shia cleric observed, "The marjaiya [the most senior clergy] cannot abandon the people in any stage in which there are problems or obstacles in the political process. The marjaiya will intervene to solve this problem by virtue of its experience."[23]

Finally, the assumption that Iraq's Shia clerics could be guided by the secular politicians and the exiles proved to be unfounded. Some of the exiles were not attuned to the rise in religiosity in Iraq. Very few had real constituencies inside of Iraq. Moreover, even exile Shia clerics had lost touch with potential supporters and were vulnerable—as Khoei himself discovered when a mob stirred up by Moqtada al-Sadr lynched him in August 2003.

In the chaotic conditions following the fall of Saddam Hussein, and in the absence of effective new institutions, Iraqi Shia turned to traditional ways of evaluating leadership. U.S. officials had little understanding of the complex system of donations and tithes made to clerics that gave them their clout by funding their schools and their networks of social and charitable organizations. Pious Iraqi Shia understand the Quran to require a tithe of 20 percent on all profits or gains from one's property and business (*khums*). Initially established to support the descendants of the Prophet Muhammad, this donation can also be given to the cleric of one's choice for him to spend on good works. The amount of tithe income a cleric receives, therefore, depends on his stature in the community.

For example, the late Ayatollah Muhammad Sadeq al-Sadr used his influence to organize "social services for the poor, directing his followers to use religious taxes and charitable contributions to set up food banks and health clinics, and provide security, basic schooling, garbage collection and even sewers. . . . The Sadr family owes its popularity in these quarters to what it has done and continues to do for those who live there."[24]

Moqtada al-Sadr may not be a recognized scholar and theologian, but as custodian of his father's vast assets, he built up a broad support base among poor and lower-class Iraqi Shia who benefited from his organization. This translated into political power and Moqtada soon became one of the leading figures in the new Iraq, precisely because he had a legion of followers.

Sistani emerged as a key figure not because he organized social services or a militia but because many Shia look to him to provide authoritative guidance and interpretation of Islamic law, not just about religious practices but on a wide variety of social, business, and political matters. This influence increased in the chaos of post-Saddam Iraq, when people were looking for authoritative leadership. There is a high degree of trust among Iraqi Shia in the theological guidance of the grand ayatollah to interpret God's will as to the best path forward.

When Saddam Hussein's regime collapsed, therefore, the religious leaders were the best positioned to fill the vacuum. Writing about the situation on the ground in Iraq in April

2003, Middle Eastern studies professor Juan Cole noted that, contrary to the expectations of U.S. officials, "[r]eligious Shiite parties and militias in Iraq have recently stepped into the gap resulting from the collapse of the Baath Party, especially in the sacred shrine cities."[25] George Packer observed that Shia clerics "filled the vacuum with energy and organization, taking over hospitals and schools, providing social services to the poor, and imposing their Islamic code on daily life, while more secular Iraqis . . . moved about in a daze."[26]

As a result, even the opinion polls conducted by the CPA showed that no secular Iraqi politician could match the approval levels enjoyed by Sistani and Sadr among Iraq's Shia.[27] Sistani and Sadr both had the capacity to mobilize large numbers of people, in contrast to the political figures that had been selected to sit on the Governing Council.

SISTANI CHALLENGES THE CPA

When Bremer took charge of the Coalition Provisional Authority, he and his main aides handling the political transition—Scott Carpenter, Meghan O'Sullivan, and Roman Martinez—were not particularly interested in involving the Iraqi Shia religious leadership in the process. Bremer's initial plan was for the Iraqi constitution to be written first, relying on a constitutional committee of appointed Iraqis, before holding elections and transferring sovereignty back to an Iraqi government; Bremer and his staff did not believe that the *hawza* would be particularly supportive of the kind of "New Iraq" they wanted to created—one characterized by a separation between mosque and state and enshrining a whole host of liberal political and social rights (including women's rights) that were not found in more traditional Islamic societies.[28] They also did not want to hold early elections that might bring anti-American forces to power and frustrate reconstruction efforts. Nor did they fully appreciate the power and influence wielded by Sistani, especially in post-Saddam Iraq. One of the American reporters in Iraq, George Packer, made the following observation: "Bremer and his advisers . . . were creating an interim constitution and negotiating the transfer of power to Iraqis, but they did not speak Arabic and had no background in the Middle East. The Iraqis they spent time with were, for the most part, returned exiles with sectarian agendas. The Americans had little sense of what ordinary Iraqis were experiencing. . . ."[29]

Because Bremer wanted to emphasize the secular nature of his policies, and to avoid sending any signals that he would compromise with the religious authorities, he made a point of avoiding contact with the *hawza* when on a visit to Najaf in July 2003. As news agencies reported, "In line with this message, Bremer skipped meeting the Shiite clergy here including the powerful Grand Ayatollah Ali al-Sistani, leader of the Hawza, the country's top Shiite Muslim authority. . . . "[30]

When Sistani issued his fatwa calling for the constitution to be written by a directly elected assembly, the first reactions of Bremer and his staff were to try and minimize its impact. Attempts were made to find another Shia cleric who would issue a countering decree, one that would legitimize Bremer's plan for Iraq's political transition.[31] But no one could be found who would be willing to cross Sistani. The exile Shia cleric on the Governing Council, Mohammed Bahr al-Uloum, made it clear he would not challenge Sistani's authority in this

matter. Even the grand ayatollah Hussein al-Sadr of Baghdad—a leading Shia cleric willing to meet publicly with Bremer and keep open a dialogue with the U.S. authorities—was not prepared to contradict Sistani. In part, this is because other Shia clerics agreed with Sistani's position. Sadr of Baghdad was in fundamental agreement with Sistani on the right of the Shia clergy to "correct" the course of secular politicians to ensure fidelity with Islamic principles.[32] Bremer's attempts to marginalize Sistani thus failed as no other Shia cleric of stature would endorse his transition plan.[33]

These efforts betrayed a lack of familiarity with how the clerical hierarchy worked within Iraqi Shiism. No lower-ranking ayatollah or cleric would have been prepared to contradict Sistani, the *marja taqlid.* Having issued the fatwa, Sistani was the only cleric who could withdraw it or modify its provisions.

Bremer and his staff then turned to the Iraqi Shia politicians on the Governing Council, who assured the Americans that "they'd take care of al-Sistani."[34] As Bremer put it to the politicians, "[T]he most helpful thing you and the other leading Shia could do is to help us find a solution to the election issue and to explain that solution to the Hawza."[35]

But this strategy had serious flaws. First, it assumed that the politicians would be able to influence Sistani; that once the politicians explained the reasoning behind Bremer's plan, Sistani would rescind his fatwa. Second, Bremer and his staff believed that if Sistani persisted in his opposition to the planned political transition, the politicians would be prepared to defy him, on the grounds that religion should not be interfering in politics.

Yet it soon became clear that the politicians were eager to obtain Sistani's blessing and seal of approval. Instead of lecturing Sistani about accepting political realities, they turned to him for guidance and advice. Shia politicians made it absolutely clear that they accepted Sistani's views about the clergy having the right to guide and counsel political leaders. When Ibrahim Jafari, one of the Shia members of the Governing Council, took his turn to serve as president of the council, he made a point of traveling to Najaf to meet with Sistani. "We came here to meet Sistani and inform him on what is happening in the Governing Council and take advice from him on all things with the Governing Council," Jafari declared after one such session in August 2003.[36]

David Phillips, a former senior State Department advisor on Iraq, observes that as support for Bremer's plan began to erode, and after the spiritual leader of the largest Shiite party in Iraq (the Supreme Council for Islamic Revolution in Iraq (SCIRI)), Ayatollah Muhammad Bakr al-Hakim, was murdered by a car bomb in Najaf on 29 August 2003, Bremer finally decided to meet with Sistani, but by this point, the cleric had decided he would not meet with any official of the occupation.[37] So a pattern soon developed; politicians on the Governing Council would assure Bremer that Sistani would change his mind, the politicians would travel to Najaf to consult with Sistani, and then come away from these meetings endorsing Sistani's position. Even non-Shia were affected. At one point Jalal Talabani, the Kurdish leader, went down to Najaf to try and persuade Sistani to withdraw his decree. After visiting with Sistani, Talabani announced to the press, "I see the views of His Grace as logical and reasonable, and

I agree with them."[38] Despite their private reassurances to Bremer, the members of the Governing Council not only never publicly disagreed with Sistani, but often endorsed his views. In early 2004, during a visit to Washington, the Shia Islamist leader Abdul Aziz al-Hakim told President George W. Bush that Sistani's position on having direct elections reflected the "view of the entire Governing Council," while Ahmed Chalabi praised Sistani to Secretary of State Colin Powell as "one of our country's greatest leaders."[39]

With the Governing Council wavering, Bremer and his advisors next turned to the 25-member Iraqi Preparatory Committee, which had been assembled in August 2003 to advise the Governing Council on plans to draw up a constitution. This committee was a more technocratic gathering than the Governing Council dominated by political exiles; most of its members were lawyers, judges, and academics. There was also an attempt to foster a balance among its members between Shia and non-Shia (Arab Sunnis, Kurds, and other ethno-sectarian groups in Iraq). Bremer hoped this committee would endorse either his original plan of having appointed delegates to a constitutional convention or, barring that, having delegates be selected from regional caucuses comprised of local leaders. Instead, when the committee met on 8 September 2003, it voted 24–0 in favor of Sistani's plan—holding national direct elections for a constitutional assembly. The committee members, in their meetings, saw how Sistani's fatwa had resonated not only among Iraqi Shia, but among non-Shia as well, who were concerned about the Americans controlling the constitutional process. Law professor Hikmat Hakim told Sistani when the committee met with him that "his fatwa would be respected" by the committee. After the vote, another committee member, Judge Yass Khudier, was quite blunt: "It was very difficult, if not impossible, to disregard the *fatwa* of Ayatollah al-Sistani."[40]

Why were the politicians unable to change Sistani's mind and why were they so afraid to challenge him? Legitimacy was a major concern. As Noah Feldman observed, "Most of the aspiring Iraqi political class succeeded only in revealing the impossibility of jumping from political unknowns to mobilizers of large constituencies. . . . The overambitious attempts of the returnee politicians seemed particularly ineffective because they were closely connected to the wavering and unstable policies for the transfer of power proposed by the CPA."[41] Sistani, in contrast, backed up his decree by an appeal to Islamic religious law—making his call for elections a religious obligation for Shia—but also by grounding his fatwa in a sense of Iraqi nationalism—that Iraqis, not outsiders, should control the political process. With this twin appeal, it was clear to the Iraqi politicians "that the ayatollah had far more legitimacy among the Iraqi people than they did."[42] Sistani showed his political clout in calling Iraqis into the streets in January 2004 to protest in favor of direct elections.[43] In Baghdad alone, more than 100,000 protestors echoed Sistani's call for elections, and it became clear that in contrast to the politicians on the Governing Council, "Iraq's Shiites largely back the position of Grand Ayatollah Ali al-Sistani."[44] The Shia politicians on the Governing Council, as a result, felt "bound to abide by Sistani's opinion."[45]

Bremer's initial plan had been for appointed Iraqi delegates to write the constitution and only then transfer sovereignty back to Iraqi authorities. The inability to convince Sistani to

back this proposal forced Bremer to scrap his transition plan. In November 2003, in an attempt to mollify Sistani, the Bush administration set 30 June 2004 as the date for the transfer of sovereignty. A provisional government would be selected using a complicated system of regional caucuses—the same mechanism that had been proposed as a way to select members of a constitutional convention, and the CPA would, in conjunction with the Governing Council, draft not a permanent constitution but a "temporary administrative law" (TAL). After agreeing to the plan on 15 November 2003, Iraqi politicians again promised Bremer that they could get Sistani to sign on to this new plan.[46]

But this was an empty promise. Sistani opposed many of the elements of the new plan, again reiterating that any government that came to power in Iraq would have to be directly elected. Adnan Pachachi, a Sunni member of the Governing Council who held the presidency in January 2004, was unable to convince Sistani to back the 15 November agreement.[47] Sistani eventually accepted that national elections could not be held prior to the handover of sovereignty in June 2004, and accepted a compromise solution: in return for the scrapping of the caucus system, he agreed to the appointment of an Iraqi Interim Government whose mandate would be to hold elections as quickly as possible (they were held in January 2005).[48] This plan, largely drawn up by the UN special representative in Iraq, Lakhdar Brahimi, was prepared in close consultation with Sistani and his advisors, in contrast to both of Bremer's transition plans.

The CPA staff also bowed to the inevitable and began to indirectly consult with Sistani about the shape of the proposed TAL. Although Bremer insisted on installing the whole panoply of Western-liberal civil and political rights, the TAL also cited Islamic religious law as a "source of legislation" and included the proviso that no law in Iraq could contradict the basic tenets of Islam. This formulation was run past Sistani to ensure that it met with his approval.[49] Some of the final language was apparently written by Sistani himself, whose office stayed in satellite telephone communication with the drafters of the TAL.[50] Even with all of this input, however, the Shia politicians on the Governing Council were so concerned about receiving Sistani's imprimatur that the signing ceremony for the TAL, which was scheduled for Friday, 5 March 2004, had to be postponed while the Shia delegates traveled to Najaf to confer once again with Sistani and ensure that they had his approval—in part by promising that some features Sistani found objectionable would be modified or deleted altogether from the permanent constitution. (The TAL was finally signed on Monday, 8 March.)[51] Sistani also played a role in vetting the members of the Iraqi Interim Government. Although nominations were made by Bremer and the representative of the United Nations (Brahimi), working with the members of the Governing Council, Sistani had the opportunity to veto candidates.[52]

In the end, Iraqi Shia politicians, far from controlling Sistani, actively sought his endorsement and blessing. Sistani's influence was put to the test of the ballot box in January 2005, because the United Iraqi Alliance was broadly understood by many Iraqi Shia to be the party list most in alignment with Sistani (and so enjoying his tacit blessing). The UIA ended up receiving the largest bloc of votes, and "in this first chance to 'give their voice'

most Shia had obeyed their religious leaders." In contrast, the more avowedly secular candidates were "stunned" by the lack of support they received from the Shia electorate.[53] Sistani proved that he could motivate a significant bloc of Iraqis and that the sources of his power—blending both religious authority and nationalism—were potent factors to contend with.

THE PROBLEM OF FILTERS

One of the factors that complicated U.S. relations with Sistani was the grand ayatollah's decision to avoid being seen as endorsing the U.S. occupation of Iraq. While Bremer had initially declined to meet with the *hawza*, Sistani then decided to avoid any direct contact with the CPA. Once Sistani made the decision that he would not meet with any member of the occupation authority, it became far more critical to have clear lines of communication between the Americans and the Shia grand ayatollah.

This was important because U.S. officials had a tendency to interpret Sistani's remarks and comments in light of what they wanted to hear. When Sistani, for instance, made a statement in April 2003 calling on Iraqi Shia not to interfere with U.S. soldiers, this ambiguous proclamation was "eagerly cited by [Deputy Secretary of Defense Paul] Wolfowitz as the 'first pro-American fatwa.'" That Sistani was probably not endorsing a long American occupation (to say nothing about having the United States fundamentally restructure Iraqi society) was reinforced by a comment made by Sistani's son and spokesman, Muhammad Rida Sistani, who said, "The Americans are welcome, but I don't think that it's a good thing that they stay for long."[54]

Initially, many U.S. officials tried to "project" their opinions onto Sistani. Bremer, for instance, asserted that he and Sistani "both desired a stable, democratic Iraq at peace with its neighbors."[55] Hume Horan also reassured his fellow Americans that "the ayatollah will work with us. We share the same goals."[56] Yet these statements were not made after face-to-face meetings with Sistani, but were secondhand interpretations. (Horan was scheduled to meet with Sistani in August 2003, but the meeting never took place because of the unsettled security situation. If it had occurred, it would have been the first direct contact between Sistani and a U.S. official.)

All of this led one American observer to conclude:

> What's weird is to hear folks in Washington speak about Sistani's views as if they just got off the phone with him. "Sistani doesn't want clerics to have a role in government," one Washington foreign policy expert told me. "Sistani believes Islam should be the national religion," said another. "Sistani is a pragmatist," said a third. All this is asserted with confidence, when in reality these people know only what they have heard from someone else—a Muslim go-between or a Sistani envoy.[57]

Language and cultural issues complicated communications. Bremer and the Iraqis all agreed that what they wanted for Iraq was "democracy," but there were clear differences in how this term was understood. Bremer told the Governing Council during its meeting of 6

November 2003 that "democracy is majority rule with protection of minority rights." For many of the members of the Governing Council, democracy was identified with the search for consensus—a point that frustrated Bremer. And for many of the Shiite clergy, democracy was the mechanism to transform Shia majoritarianism into Iraq's government.[58]

Bremer's plan for selecting an interim Iraqi administration through caucuses also ran into translation problems. No precise Arabic term renders the meaning of the English word "caucus," nor was this a familiar and understandable process to most Iraqis. The CPA staff attempted to convey a meaning by using the Arabic for "election by conference" to convey that delegates would be elected by regional gatherings of tribal, ethnic, and religious leaders. Yet it was never clear that Iraqis, including Sistani and his staff, really understood what Bremer was proposing.[59] Bremer himself apparently had difficulties in explaining his plan.[60]

It was also not always clear whether Bremer's messages reached Sistani, or whether the go-betweens were able to bridge the cultural gap between Bremer and Sistani. There was also concern that some emissaries were less interested in ensuring accuracy in communication between Bremer and Sistani and more in enhancing their own statuses.[61] This became a concern to leading figures within the Bush administration particularly as Bremer's plans for political transition in Iraq were running aground: "Washington is not sure how many of the indirect communications have reached the aging and reclusive cleric, U.S. officials add. The United States is still looking for people who know Sistani well enough to act as go-betweens for the negotiations or to explain Sistani's thinking."[62]

One point of contact was between Sistani and the United Nations. After Sergio Vieira de Mello was appointed the special representative of the UN Secretary-General for Iraq in May 2003, he started a dialogue with Sistani.[63] Vieira de Mello's political advisor was the former Lebanese minister Ghassan Salame, meaning that the UN representative had a fluent Arabic speaker who could communicate directly with Sistani.[64] But the meetings were cut short by the terrorist attack against the UN mission in August 2003, which killed Vieira de Mello and caused the UN to close down its presence in Baghdad. Moreover, Bremer distrusted Sistani's motives in dealing with the United Nations, since Sistani made it clear that he was interested in getting UN support for his fatwa in support of early elections. Larry Diamond, who served as a CPA advisor on governance, says that Vieira de Mello, after one of his meetings with Sistani, "went to Bremer in mid-June to warn that a political bomb was about to explode—in the form of a fatwa from Sistani insisting that any constitution-making body for Iraq had to be popularly elected—Bremer dismissed the warning."[65]

When the UN Secretary-General sent former Algerian foreign minister Lakhdar Brahimi to Iraq as his special representative in February 2004, Brahimi immediately reached out to Sistani. He was able to hold hours of direct talks with Sistani without the need for interpreters. Brahimi agreed with Sistani on the importance of elections but also convinced the grand ayatollah that it was critical that "the elections must be well prepared and well arranged and must be done under the best possible circumstances." Brahimi was able

to establish a rapport with Sistani and to get him to accept that elections could not be held prior to the transfer of sovereignty planned for 30 June 2004.[66]

Bremer sought other avenues to reach Sistani. However, he could never be sure that Iraqi politicians or Shia clergy would accurately convey his own thoughts and whether they would shade their remarks to avoid a direct clash with Sistani. For instance, Bremer had a number of meetings with the Shia ayatollah of Baghdad, Hussein al-Sadr, but could only hope that the Shia cleric was passing along Bremer's messages in an accurate fashion.[67] Iraqi politicians definitely played down any possible conflict between Bremer's position and Sistani's, to the point where they refused to be the carriers of anything that could be perceived as bad news. American reporter and columnist David Ignatius noted the effects of this miscommunication when he reported: "So how did the savvy Bremer misread Sistani's insistence on elections when he announced the U.S. transition plan Nov. 15? The answer seems to be botched communication, in which an emissary from the Governing Council either misstated Bremer's plan to delay elections or misunderstood Sistani's response."[68]

Not surprisingly, Bremer wanted his own go-between. His initial choice, an Iraqi-American doctor, was phased out after he began to inflate his own political importance in Washington with Sistani's people, including exaggerating his links to the White House. Sistani's aides were also reportedly not happy with this choice of emissary, arguing that he lacked the requisite gravitas for interacting with the grand ayatollah.[69]

Bremer then turned to another Iraqi exile, Emad Dhia al-Khirsan, who had been the founder of the Iraqi Forum for Democracy and who was serving as the director of the Iraq Reconstruction and Development Council. Dhia would end up having more than three dozen meetings with Sistani and Sistani's staff on Bremer's behalf. But did Sistani's staff see Dhia as an acceptable intermediary?[70] Did Dhia properly interpret Sistani's replies for Bremer? Did Sistani's vague, nonconfrontational replies to Bremer become transformed into far more definitive guarantees? In some cases Dhia did not actually meet with Sistani but rather with his son, Muhammad Rida Sistani; sometimes he would receive only a written communication.[71] Others who had dealt with Sistani noted that his communications could be unclear and that the cleric rarely took a confrontational tone.[72] That there was a gap in translation appears obvious from Bremer's complaints that Sistani's messages as relayed by Dhia contradicted Sistani's other, more public statements and Sistani's messages as relayed to other interlocutors.[73] Bremer himself referred to "clouded messages" he would receive via Dhia from Sistani.[74]

Bremer also began to utilize the good offices of Governing Council member Mowaffak Rubaie, a Shia politician with close ties to the *hawza*, as a back channel to Sistani.[75] Rubaie tended to be much more up-front and direct with Bremer about Sistani's inflexibility and unwillingness to back away from his positions. While Rubaie had no immediate successes in convincing Sistani to back Bremer's plans, he at least managed to convey to Bremer and his staff the importance of taking Sistani's objections seriously.[76] But Rubaie's credibility as an interlocutor with Sistani was challenged by other Iraqi Shia.[77]

In the end, Bremer lacked a clear channel of communications to Sistani, and had to rely on the filtering of Sistani's messages done by Dhia, Rubaie, and other intermediaries. In contrast, Brahimi's ability to interact directly with Sistani produced a far more fruitful dialogue, especially in getting Sistani not to oppose the creation of the Iraqi Interim Government. Diamond contrasts the problems the CPA had in using intermediaries to contact Sistani, where "the signals became crossed," with Brahimi's "patient and methodical discussions" with Sistani that convinced the grand ayatollah to accept compromise.[78]

SOME CONCLUDING THOUGHTS

Back in November 2003, an unnamed Governing Council member complained: "We could have organized this [transition] by now had we started when Sistani issued his fatwa. But the Americans were in denial."[79] The argument, of course, is that the U.S. authorities should have been prepared to come to terms with Sistani rather than oppose him.

But why did the CPA persist in its showdown with Sistani? Why did it not follow the advice put forward by Larry Diamond, who urged the United States to work closely with Sistani, because "[n]o Iraqi commands a wider following of respect and consideration, and has more capacity to steer political developments away from violence and extremism, than Sistani, who insists on free elections as the basis of political legitimacy"?[80]

First, many of the CPA members—beginning with Bremer and continuing down the staff—did not have much situational awareness when it came to Iraqi society and politics. The number of those who spoke Arabic was "shockingly low," in the opinion of Noah Feldman, and there were few regional experts on staff. This meant that the CPA was largely unaware of the power and influence of the *hawza* or how it was organized and could not easily interact with the Shia clergy. And few U.S. officials took the time to become better informed.[81]

Lacking knowledge about Iraq, the Shia, and the role of Sistani, Bremer's staff—especially Martinez, O'Sullivan, and Carpenter—too readily accepted the assurances of Iraqi politicians that they could get Sistani to change his position.[82] They had no independent way of assessing how little influence these politicians had, or the extent to which Sistani could mobilize Iraqi public opinion.

The CPA also tried to encourage American-style separation of religion and politics in Iraq, and was generally uncomfortable with the influence religion exercised in Iraqi life.[83] Bremer made it clear that during his tenure as administrator, he would work to minimize the role of Islam in Iraqi politics, especially in legislation. In this, he was encouraged both by the White House and by many members of the U.S. Congress.[84]

Loss of control of the process was also a major fear of the CPA. As Diamond notes, the "CPA [officials] didn't want anything to happen that they didn't control—and this has been impossible to hide from the Iraqis."[85] In particular, Bremer was unwilling to recognize how much influence Sistani wielded and "chafed at the idea that a cleric would be able to dictate Iraq's democratic transition."[86]

Bremer, at the end of his tenure as CPA administrator, recognized Sistani's power and influence in Iraq. He complained that he had "been unable to deliver either of my two plans (. . . in both cases because of Sistani . . .)."[87] A better understanding of the importance of religion and nationalism in Iraq might have led Bremer and his staff to avoid any confrontation with Sistani and instead to seek accommodation. Instead, the CPA was forced to back down and abandon its plans, given the opposition Sistani could marshal.

APPENDIX

THE FATWA ISSUED BY AYATOLLAH SISTANI, 25 RABIUL-AKHAR 1424 (26 JUNE 2003)

In the Name of the Almighty.

Those forces [referring here to the Coalition Provisional Authority] have no jurisdiction whatsoever to appoint members of the Constitution preparation assembly. Also there is no guarantee either that this assembly will prepare a constitution that serves the best interests of the Iraqi people or express their national identity whose backbone is sound Islamic religion and noble social values. The said plan is unacceptable from the outset. First of all there must be a general election so that every Iraqi citizen—who is eligible to vote—can choose someone to represent him in a foundational Constitution preparation assembly. Then the drafted Constitution can be put to a referendum. All believers must insist on the accomplishment of this crucial matter and contribute to achieving it in the best way possible.

May Allah The Blessed Almighty, guide everyone to that which is good and beneficial.

[This is the English text approved by Sistani's office for distribution. It is contained in Noah Feldman, *What We Owe Iraq: War and the Ethics of Nation Building* (Princeton: Princeton University Press, 2004), 140.]

Notes

1. Rajiv Chandrasekaran, *Imperial Life in the Emerald City* (New York: Alfred A. Knopf, 2007), 289.
2. George Packer, *The Assassins' Gate: America in Iraq* (New York: Farrar, Straus and Giroux, 2005), 190, 314.
3. Rajiv Chandrasekaran, "How Cleric Trumped U.S. Plan for Iraq; Ayatollah's Call for Vote Forced Occupation Leader to Rewrite Transition Strategy," *Washington Post*, 26 November 2003, A01.
4. L. Paul Bremer, with Malcolm McConnell, *My Year in Iraq: The Struggle to Build a Future of Hope* (New York: Simon and Schuster, 2006), 12.
5. Packer, *Assassins' Gate,* 186–187.
6. Bremer, *My Year in Iraq,* 94, 96–98.
7. Chandrasekaran, *Imperial Life*, 198.
8. Noah Feldman, *What We Owe Iraq: War and the Ethics of Nation Building* (Princeton: Princeton University Press, 2004), 36.
9. See, for instance, the op-ed penned by Randy Scheunemann, longtime foreign policy advisor to Senator John McCain and at the time president of the Committee for the Liberation of Iraq, "A Democratic Iraq? Yes," *Los Angeles Times*, 13 April 2003, M1, as an example of the arguments in favor of the proposition that it was feasible to establish a secular democracy in Iraq.
10. Wolfowitz's most famous quote on the subject was his 19 February 2003 interview with National Public Radio, in which he said, "The Iraqi population is completely different. . . . The Iraqis are among the most educated people in the Arab world. They are by and large quite secular. They are overwhelmingly Shi'ite, which is different from the Wahhabis of the peninsula. They don't bring the sensitivity of having the holy cities of Islam on their territory." (Quoted in Marc Erikson, "Dangerous Illusions of a Democratic Shiite Iraq," *Asia Times*, 26 February 2004, http://www.atimes.com/atimes/Middle_East/FB26Ak01.html.) See also David L. Phillips, *Losing Iraq: Inside the Postwar Reconstruction Fiasco*

(New York: Westview Press, 2005), 60; and Packer, *Assassins' Gate,* 115.

11. Con Coughlin, *Khomeini's Ghost: The Iranian Revolution and the Rise of Militant Islam* (New York: Ecco, 2009), 116.
12. Ahmed S. Hashim, *Insurgency and Counter-Insurgency in Iraq* (Ithaca, NY: Cornell University Press, 2006), 231, 232.
13. His comments appeared in *Al-Hayat*, 26 September 2002, 3.
14. Salah Nasrawi, "Edict Reportedly Issued by Shiite Cleric in Iraq Condemns Any Cooperation with Americans," Associated Press, 23 September 2002.
15. This report was largely ignored by the Department of Defense and has come under criticism for not providing concrete blueprints for action. Nevertheless, many CPA officials later found the project to be of use, with one describing it as "our Bible coming out here." See the reactions to the project at "New State Department Releases on the 'Future of Iraq' Project," *National Security Archive*, 1 September 2006, http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB198/index.htm.
16. "The Future of Iraq: The Iraqi Component." It should be noted that the redacted version of the report takes the section dealing with Khoei and Uloum and notes, "Too soon to start naming candidates." A copy of the report can be found at http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB198/20020005.pdf.
17. A copy of the report of the Democratic Principles Working Group can be found at http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB198/FOI%20Democratic%20Principles.pdf. The section dealing with religion and statehood is section 8.3.2, 95–96.
18. Ronald Inglehart and Pippa Norris, *Sacred and Secular: Religion and Politics Worldwide* (Cambridge, UK: Cambridge University Press, 2004), 14.
19. Comments of a senior CPA official to the author.
20. George Packer, "Betrayed: The Iraqis Who Trusted America the Most," *New Yorker*, 29 March 2007, available at http://www.newyorker.com/reporting/2007/03/26/070326fa_fact_packer?currentPage=all.
21. Lawrence Rothfield, *The Rape of Mesopotamia* (Chicago, IL: University of Chicago Press, 2009), 103.
22. Hashim, *Insurgency and Counter-Insurgency in Iraq,* 245.
23. Anthony Shadid, "Political Impasse Alarms Shiite Clergy," *Washington Post,* 3 April 2005, A16, available at http://www.washingtonpost.com/ac2/wp-dyn/A21865-2005Apr2?language=printer.
24. Vali Nasr, *Forces of Fortune: The Rise of the New Muslim Middle Class and What It Will Mean for Our World* (New York: Free Press, 2009), 170.
25. Juan Cole, "Shiite Religious Parties Fill Vacuum in Southern Iraq," *Middle East Report Online*, 22 April 2003, http://www.merip.org/mero/mero042203.html.
26. Packer, *Assassins' Gate,* 168.
27. Michael Hirsch, "Grim Numbers," *Newsweek*, 15 June 2004, http://www.newsweek.com/id/53862.
28. Chandrasekaran, *Imperial Life*, 186.
29. Packer, "Betrayed."
30. "Bremer Reaches Out to Iraqi Shiite Heartland," Agence France-Presse, 9 July 2003.
31. Chandrasekaran, *Imperial Life*, 80.
32. Ma'ad Fayad, "Grand Ayatollah Hussein al-Sadr Talks to Asharq Al-Awsat," *Asharq Al-Awsat*, 20 October 2008, available at http://www.aawsat.com/english/news.asp?section=3&id=14466.
33. Phillips, *Losing Iraq,* 179.
34. Chandrasekaran, *Imperial Life*, 187.
35. Bremer, *My Year in Iraq,* 202.
36. "Governing Council President Meets Iraq's Top Shiite Cleric," Agence France-Presse, 6 August 2003.
37. Phillips, *Losing Iraq,* 179.
38. Chandrasekaran, *Imperial Life*, 205.
39. Bremer, *My Year in Iraq,* 283.
40. Chandrasekaran, "How Cleric Trumped"; Chandrasekaran, *Imperial Life*, 186–187.

41. Feldman, *What We Owe Iraq,* 42.
42. Chandrasekaran, *Imperial Life*, 190.
43. Kirk Troy, "Iraqi Ayatollah al-Sistani Exerts Powerful Influence in Shaping New Government," *Voice of America*, 25 February 2004. Cited at http://payvand.com/news/04/feb/1185.html.
44. Howard La Franchi, "US Seeks Global Aid for Iraq," *Christian Science Monitor*, 21 January 2004, 1.
45. Phillips, *Losing Iraq,* 180.
46. Chandrasekaran, "How Cleric Trumped."
47. Bremer, *My Year in Iraq,* 272.
48. Troy, "Iraqi Ayatollah."
49. Bremer, *My Year in Iraq,* 296.
50. Rod Nordland and Babak Dehghanpisheh, *"What Sistani Wants," Newsweek*, 14 February 2005, available at http://www.newsweek.com/id/48896/page/1.
51. Bremer, *My Year in Iraq,* 302–306.
52. Reuel Marc Gerecht, "Democratic Revolution in Iraq?" *AEI Outlooks and On the Issues*, 21 June 2004, available at http://www.aei.org/issue/20774.
53. Packer, *Assassins' Gate*, 439.
54. Cole, "Shiite Religious Parties."
55. Bremer, *My Year in Iraq,* 166.
56. Ibid., 165.
57. Colbert I. King, "The Grand Ayatollah behind the Curtain," *Washington Post*, 28 October 2006, A15.
58. Bremer, *My Year in Iraq,* 213.
59. Robin Wright and Daniel Williams, "U.S. Scrambles to Salvage Transition," *Washington Post*, 16 January 2004, A01, available at http://www.washingtonpost.com/ac2/wp-dyn/A21187-2004Jan15?language=printer.
60. Phillips, *Losing Iraq,* 180.
61. Ibid., 179.
62. Ibid.
63. Packer, *Assassins' Gate*, 213.
64. "Reclusive Cleric Greatest Challenge to US-Led Coalition in Iraq," *Irish Examiner*, 26 January 2004, available at http://archives.tcm.ie/irishexaminer/2004/01/26/story335852750.asp.
65. Larry Diamond, "What Went Wrong in Iraq," *Foreign Affairs*, September/October 2004. Text is archived at http://www.mtholyoke.edu/acad/intrel/iraq/diamond.htm.
66. See "ARABS-UN—Feb. 12—Brahimi Meets Sistani," *APS Diplomat Recorder*, 14 February 2004.
67. After one meeting with Hussein al-Sadr, Bremer writes that he "got the impression" that Sadr would counsel Sistani and help him see things Bremer's way—but there were no guarantees of this occurring. Bremer, *My Year in Iraq,* 318.
68. David Ignatius, "Bremer's U.N. Lifeline," *Washington Post*, 16 January 2004, A19. Chandrasekaran reports that Bremer ran his caucus plan past Adel Abdel-Mehdi, the spokesman for the largest Shiite party, the Supreme Council for the Islamic Revolution in Iraq, and asked whether Sistani would approve. Abdel-Mehdi replied to Bremer, "I'm sure," according to reports. But Abdel-Mehdi's confidence that Sistani would in fact approve was misplaced. Chandrasekaran, "How Cleric Trumped."
69. Chandrasekaran, *Imperial Life*, 79.
70. Dhia certainly enjoyed the confidence of Bremer, who described him as a "discreet conduit" to Sistani. Yet Sistani's staff apparently did not hold Dhia in particularly high regard. See Bremer, *My Year in Iraq,* 240; and Chandrasekaran, *Imperial Life*, 79.
71. "Reclusive Cleric."
72. Wright and Williams, "U.S. Scrambles."
73. For example, Bremer told U.S. reporter George Packer that "Sistani is saying different things in private" from what he was saying in public. Packer, *Assassins' Gate*, 213.
74. Bremer, *My Year in Iraq,* 240.
75. Marc Erikson, "Deadline Looming, U.S. Forces the Issue," *Asia Times*, 27 April 2004, http://www.atimes.com/atimes/Middle_East/FD27Ak03.html.
76. For instance, Rubaie tried to explain Bremer's system of caucuses to Sistani and to convince him that it could substitute for the general elections he had called for in the fatwa. He was unable to persuade

Sistani and so reported back to Bremer. See Chandrasekaran, "How Cleric Trumped."

77. In one example, Rubaie's account of a supposed assassination plot against Sistani was challenged as a fabrication by other Iraqi Shia leaders. Rory McCarthy and Michael Howard, "Cleric 'Survives Assassination Bid,'" *The Guardian*, 6 February 2004, http://www.guardian.co.uk/world/2004/feb/06/iraq.rorymccarthy.
78. Diamond, "What Went Wrong."
79. Chandrasekaran, "How Cleric Trumped."
80. Testimony of Larry Diamond, *Iraq's Transition—The Way Ahead,* Senate Foreign Relations Committee, 108th Cong., 2nd sess. (19 May 2004), available at http://www.au.af.mil/au/awc/awcgate/congress/040519diamond.pdf.
81. Feldman, *What We Owe Iraq,* 32, 1. Feldman notes how struck he was by the fact that CPA staff were *not* reading books and studies about Iraq.
82. Chandrasekaran, *Imperial Life*, 197.
83. For example, the CPA tried to remove the prayers that traditionally open television broadcasts. Dan Senor, of the CPA's strategic communications team, was quite blunt: "We are going to start off by separating religion from television programming." Ibid., 134.
84. "Bremer Will Reject Islam as Source for Law," Associated Press, 16 February 2004, available at http://www.msnbc.msn.com/id/4276149/.
85. Diamond, "What Went Wrong."
86. Chandrasekaran, "How Cleric Trumped."
87. Bremer, *My Year in Iraq,* 243.

Congress and the Executive Branch: Sanctioning Iran

NIKOLAS K. GVOSDEV

The ambiguities in the U.S. constitutional system as to which branch has final, supreme authority to set foreign policy are, in the eyes of many observers, "an 'invitation to struggle' over control" between the president and Congress.[1] As Sean Sullivan and David Williams note:

> The responsibility for formulation and execution of foreign policy was not explicitly assigned to one specific branch of the federal government. Some foreign policy responsibilities and functions are assigned to both the Executive and the Legislative branches. In contrast to the explicit procedures concerning the making of laws, the framers did not provide a clear blueprint for crafting and implementing foreign policy.[2]

Like Roman gladiators in the arena armed for combat with different weapons, Congress and the executive branch have different tools to affect policy. The president has the advantage of initiative, because, as Thomas Jefferson observed, "[t]he transaction of business with foreign nations is executive altogether: it belongs, then, to the head of that department. . . ."[3] The legislature, however, has various constitutional powers at its disposal to constrain the executive branch: the powers of the purse, of oversight, and of regulation; in addition, the Senate must confirm appointees and ratify treaties.

As the distinction between "foreign" and "domestic" policy is blurred, "foreign policy issues are increasingly subject to the same political forces as domestic issues." As Lance LeLoup and Steven Shull point out, "foreign policy" now encompasses "trade, competitiveness, immigration, base location, terrorism, foreign and military aid, and international environmental issues"[4]—all issues that Congress is concerned about, meaning that presidents increasingly must "bargain and persuade" in order to get their agendas approved. In turn, by passing new laws and regulations, the House of Representatives and the Senate can attempt to enact their vision as to how U.S. foreign policy should be executed by the president.

THE ALLURE OF SANCTIONS

Sanctions are a popular tool in the foreign policy kit. As Solomon Major and Anthony McGann point out:

> The past several decades have borne witness to a substantial increase in the use of economic sanctions to achieve a growing number of policy goals. One study . . . has noted

> that, from the 1940s through the end of the cold war, the number of sanctions events initiated increased nearly fourfold. Despite considerable evidence pointing to sanctions' relative lack of success in the past, there is a growing consensus that the use of sanctions will likely continue to increase for the foreseeable future.[5]

Why the popularity? Richard Haass, now president of the Council on Foreign Relations (and former director of policy planning at the State Department during the Bush administration), explains:

> Economic sanctions are popular because they offer what appears to be a proportional response to challenges in which the interests at stake are less than vital. They are also a form of expression, a way to signal official displeasure with a behavior or action. They thus satisfy a domestic political need to do something and reinforce a commitment to a norm, such as respect for human rights or opposition to weapons proliferation. Reluctance to use military force is another motivation. As the National Conference of Catholic Bishops points out, "Sanctions can offer a nonmilitary alternative to the terrible options of war or indifference when confronted with aggression or injustice."[6]

In 1977, Congress passed the International Emergency Economic Powers Act (IEEPA). Its provisions, listed in Title 50 of the U.S. Code (sections 1701–1707), give to the president a wide range of tools to respond to any "unusual or extraordinary threat" to the national security or economic interests of the United States. These include the power to declare economic sanctions. President Jimmy Carter was the first to utilize this new authority when he issued Executive Order 12170, freezing Iranian assets in the United States following the seizure of the U.S. embassy in Tehran. Presidents embraced the authority given to them by this act, which enabled them to act swiftly in times of crisis. For instance, President George H. W. Bush immediately used these powers, hours after the invasion of Kuwait by Iraq in August 1990, to freeze Kuwaiti assets in the United States and to impose a near-total trade embargo on Iraq.

Presidents also used their authority under IEEPA to try and set policy in an effort to headoff or forestall congressional action. President Ronald Reagan, for instance, initially opposed imposing sanctions on South Africa for its policies of apartheid. As pressure grew on the United States to "do something," particularly after the imposition of martial law, Reagan lost the support of moderate Republicans in both the House and Senate. As legislation began making its way through both houses of Congress that would have imposed drastic sanctions against Pretoria, Reagan issued an executive order on 9 September 1985 that put into place limited sanctions. This, combined with a filibuster mounted in the Senate by Jesse Helms (R-NC), enabled the president to hold off congressional action. As Kenneth Mayer concluded: "When faced with the certain prospect of legislation imposing sanctions on South Africa . . . President Reagan successfully fractured a veto-proof coalition of Democrats and moderate Republicans by imposing weaker sanctions by executive order. In doing so, he 'managed to avoid a major legislative defeat and the further embarrassment of an almost inevitable veto override. . . .'"[7]

In 1986, the House of Representatives again passed stringent sanctions against South Africa. Reagan renewed his sanctions order but this was insufficient to stop the momentum of the House bill; however, Senator Richard Lugar (R-IN) was able to craft a compromise piece of legislation that, while it went further than Reagan's position, still fell far short of the comprehensive sanctions envisioned in the House bill. Lugar's version passed both houses of Congress and when Reagan vetoed the bill, both the Senate and the House voted to override the president.[8]

On the one hand, this was a major defeat for the president—having a presidential veto overridden by Congress on a foreign policy issue is extremely rare.[9] On the other hand, the final version of the Comprehensive Anti-Apartheid Act (Public Law 99-440) contained several provisions that shifted the initiative back to the executive branch. The president was required to submit a report to Congress detailing whether the sanctions had been effective in achieving their objectives, giving the White House the opportunity to assess their utility and the opportunity to decline to impose additional sanctions if existing ones were deemed to be ineffective. More important, the president had the power to relax or lift sanctions if South Africa met four out of five conditions (lifting the ban on political parties, engaging in "good faith" negotiations with the opposition, lifting the state of emergency in Natal Province, freeing political prisoners, and repealing both the Group Areas and Population Registration acts).

The tug-of-war over South Africa sanctions between the Reagan administration and Congress set the pattern for the future. An administration is loath to accept limits placed by Congress on its freedom to maneuver within the international political system, preferring the independence of action afforded by executive orders rather than operating within the constraints of congressional statute. But if a sanctions bill is likely to clear Congress, the fallback position is to have friends of the administration within either the House or the Senate lobby hard for inserting language that either puts a time limit for sanctions to expire or gives the president a great deal of flexibility in how those sanctions will be applied.

CLINTON, IRAN, AND CONGRESS

When the Republicans won control of both the House of Representatives and the Senate after the November 1994 midterm elections, they put President Bill Clinton and his administration "on notice that they intended to take an activist role in domestic and foreign affairs. . . . Republican members of Congress have made clear their intention to rake the White House over the coals when it comes to divisive or embarrassing foreign policy issues."[10] Political analysts predicted a loss of influence for the executive branch, because, with "the GOP in the driver's seat, Congress will be able to blunt Clinton initiatives by cutting off funds, rejecting accords, and blocking political appointments."[11]

By becoming the majority party in Congress, leading congressional critics of the Clinton administration took control of the legislative machinery. In the Senate, Jesse Helms became the chairman of the Foreign Relations Committee; in the House, the International Relations Committee was now headed by Representative Benjamin Gilman (R-NY). Both

men were skeptical of the Clinton administration's approach to foreign affairs and both were adamant opponents of any measures that might relax U.S. sanctions against "rogue states" as a prelude to greater diplomatic engagement.[12] Once the new Senate convened in January 1995, Majority Leader Robert Dole (R-KS) immediately introduced bills "using the congressional power of the purse against President Clinton's foreign policy"—these included provisions to prevent the United States from supplying fuel oil to North Korea under the terms of the 1994 framework agreement; to cut U.S. payments for UN peacekeeping efforts, particularly in Haiti; and to unilaterally lift the arms embargo imposed by the United Nations on all former Yugoslav states to enable the government of Bosnia to purchase American weaponry.[13]

At first, Iran was not a major issue that would seem to divide the executive and legislative branches. Clinton's own national security team was very suspicious about Iran. Clinton's secretary of state, Warren Christopher, had been deputy secretary of state in the Carter administration and had been the chief negotiator with Iran in the final months of the hostage crisis. He characterized the Islamic Republic as an "international outlaw." Clinton's national security advisor, Tony Lake, viewed Iran as one of the "reactionary backlash states" (a prelude to the later formulation of "rogue states").[14] In May 1993, the senior director for Near East and South Asian affairs at the National Security Council, Martin Indyk, described administration policy toward Iran and Iraq as "dual containment"—isolating and pressuring both the Islamic Republic and the regime of Saddam Hussein to prevent either from dominating the Persian Gulf or extending its influence throughout the Middle East.

But Republicans saw dual containment as only a start. Conservative foreign policy activist Daniel Pipes, testifying before the Subcommittee on the Near East and South Asia of the Senate Foreign Relations Committee, argued that dual containment "falls short in terms of tactics." He advised tightening the economic noose around Iran, and for Congress to pressure the administration to move beyond just "containing" Iran toward eventual regime change.[15]

Senator Alfonse D'Amato (R-NY), chairman of the Senate Banking Committee, introduced legislation in January 1995 (entitled the "Comprehensive Iran Sanctions Act of 1995") designed to cut Iran off from the global economy. While existing executive orders already banned most U.S. exports to Iran and direct imports of Iranian oil to the United States, D'Amato's bill would

> forbid all US-owned subsidiaries abroad from conducting any business with Iran or any enterprise owned by Iranian citizens [and] . . . would also prohibit US oil companies from purchasing Iranian oil for resale to third parties. . . . D'Amato's bill would require the US treasury secretary to instruct US executive directors of the International Bank for Reconstruction & Development, the International Development Association, the Asian Development Bank and the IMF to oppose any extension of credit or other financial assistance to Tehran.[16]

Of particular concern to D'Amato was the role played by U.S. companies in the resale of Iranian oil to third parties and Iran's continuing ability to buy American goods, even despite the existing restrictions. D'Amato argued that the United States had to "begin a worldwide effort at halting all exports to Iran until it sheds its violence and antagonism towards the West. . . . We cannot sit back and allow this bloodthirsty band of terrorists to grow into a monster too big for anyone to handle."[17] If the administration would not act, then Congress would.

D'Amato's sponsorship of this legislation also reflected a change in how foreign policy was being formulated. As Kimberly Ann Elliott and Gary Hufbauer noted:

> The end of the Cold War dramatically altered the diplomatic chessboard. With the capitalist-communist battle all but over, other causes gained greater prominence. . . . In the United States, NGO's often succeeded in mobilizing congressional . . . support for sanctions, even in the face of ambivalence or opposition from the foreign-policy establishment.[18]

As the Middle East peace process moved forward during the 1990s, Iran was increasingly seen as the main obstacle to stabilizing the Middle East, particularly because of its support for Hezbollah in Lebanon and for those Palestinian groups, including Hamas, which rejected the peace process with Israel. D'Amato, as a senator from New York, was particularly responsive to appeals of lobby groups calling for greater pressure against Iran as a way to support Israel. After all,

> [i]t was both D'Amato's strong pro-Israel public statements and his activities in these two key subcommittees which caused many traditional Jewish Democrats (and almost all of the pro-Israel PAC's) to back him solidly. . . . Over the years D'Amato has proven himself to be more consistently supportive and outspoken on Israel-related issues than most of his Jewish Senate colleagues—a track record which has not gone unnoticed both here in Washington and in his home state as well.[19]

The bill put the Clinton administration in an awkward position. On the one hand, as Ken Pollack, then serving in the administration as the director for Gulf affairs at the National Security Council, pointed out, the "administration did not like the idea of Congress mandating such a dramatic foreign policy shift."[20] On the other hand, while "President Clinton . . . could veto the bill on the grounds that it would tie his hands in foreign and trade policy," administration officials were worried about "the peril of appearing soft on Iran."

> The problem is particularly sticky in light of U.S. criticism of Russia's announcement this month that it will proceed with sales of nuclear reactors and other deals with Iran. U.S. objections may ring hollow with the Russians if the administration opposes the D'Amato bill. A veto would also be hard to explain to the pro-Israel lobby.[21]

In assessing the situation, some within the administration speculated that D'Amato was motivated by politics as much as his concern for national security.

> The quandary for Mr. Clinton has prompted speculation that the bill is aimed at least partly at putting the president on the spot. A D'Amato aide sidestepped the question,

> saying only that "the goal of the senator's bill is to stop U.S. companies from indirectly subsidizing terrorism."[22]

So, as a matter of principle, presidential administrations prefer not to have Congress write and pass sanctions legislation, because of the perceived loss of flexibility for the executive branch in engaging in negotiations with other states. When asked to comment about D'Amato's proposed legislation, White House spokesman Mike McCurry said at a press briefing (7 March 1995): "We do have our own form of economic pressures in place."

But the administration's hand was forced by an announcement by Conoco, Inc., a U.S.-based oil firm, that its Dutch subsidiary, Conoco Iran N.V., was planning to develop several offshore Iranian oil fields. Conoco claimed that because a non-American entity was handling the project and the oil and natural gas produced would be exported to customers in Asia and Europe, not the United States, it was not in violation of existing U.S. laws and orders barring trade with Iran. The White House reluctantly agreed, noting that Conoco's contract "does not appear to be illegal or prohibited under U.S. law at this time."[23]

Conoco's plans produced a firestorm of criticism, and in the immediate aftermath, D'Amato's proposed sanctions legislation "suddenly got a raft of Congressional cosponsors."[24] This pressured the president to act.[25] Just as Reagan imposed limited sanctions on South Africa to try and preclude congressional action, the Clinton administration attempted the same approach. One week after the Conoco announcement, the president issued Executive Order 12957 on 15 March 1995, which prohibited any U.S. citizen or company (including its subsidiaries) from undertaking any activity with an eye to developing the "petroleum resources" of Iran. Clinton followed up with a second order, Executive Order 12959 (6 May 1995), which effectively banned any U.S. citizen or company from engaging in trade with Iran.

With these two executive orders in place, the Clinton administration had, on its own authority, dramatically tightened the economic screws on Iran. Why did it not end momentum in Congress to pass additional sanctions legislation?

First, the executive orders did not go as far as Senator D'Amato and others had wanted. There were still gaps and the most that the White House was prepared to promise was that it would "consider" additional steps, but not guarantee that D'Amato's proposals would be fully incorporated into any future executive orders.[26]

Second, Congress, in general, distrusts executive orders as a tool for policy. As Mayer concludes:

> [P]residents have, throughout U.S. history, used their executive authority to make policy on their own without interference from either Congress or the courts. . . . The president's power to make policy through executive orders has grown along with, and has reinforced, the expansion of executive branch responsibilities. Some of this authority has been delegated to the president by Congress, but presidents have also simply assumed unilateral policymaking powers, especially in national security and foreign policy matters.[27]

Matters were not helped by advice given by political consultant Dick Morris to Clinton in the aftermath of the 1994 midterm elections. In a memorandum prepared for the president, Morris advised him to use "executive branch actions" to promote policies without legislative approval and to use "foreign policy situations to demonstrate your strength" vis-à-vis congressional Republicans.[28]

Moreover, what the president grants unilaterally can also be taken away unilaterally. This point was driven home by *New York Times* columnist A. M. Rosenthal, who stressed: "[W]hat the President giveth he can canceleth. . . . Whether or not Mr. Clinton acts, Congress should give a full embargo the non-cancelable stability of legislation. That will at last give Washington some ethical pressure against deals with Iran by our allies."[29]

Finally, this particular, Republican-controlled Congress did not automatically trust this particular president, Bill Clinton, with how he conducted foreign affairs. This was reflected in the number of congressional votes he lost on foreign and defense policy issues. As Jim Mann concluded after assessing the administration's track record with the 104th Congress: "Clinton has won only half of all congressional votes on issues involving foreign policy and national security, the lowest batting average for any president since the figures were first kept a half-century ago."[30]

Congressional Republicans had been disturbed at how Clinton had handled normalization of U.S. relations with Vietnam. In July 1993, the president had dropped long-standing U.S. objections in international organizations to providing financial aid for development projects in Vietnam. Clinton also used his authority under IEEPA first to modify the existing embargo and then, on 3 February 1994, to completely lift the embargo on Vietnam. Although Clinton took this step after a "sense of the Senate" vote in January, he did not defer to Congress; congressional approval of this step occurred after the embargo had already been lifted.[31] Congressional Republicans vowed to make sure that, in the future, the president "can't do what he did on Vietnam."[32] After all, might the president also take unilateral steps with regard to other "rogue states" without the approval of Congress? Clinton had already signaled, back in 1993, that he might be open to a normalization of relations with Saddam Hussein—a position that his administration quickly walked back from.[33] When it came to Cuba, the administration seemed to be moving toward a possible normalization of relations with Fidel Castro, as the administration considered modifying existing embargoes "to increase cultural exchanges and travel with Cuba."[34] Despite the skepticism of his foreign policy team, the president also "hoped to improve relations with Iran and nudge forward a moderation of the radical theocracy that ruled the country."[35]

There was also the precedent of Clinton promising Congress to take action by executive order in order to avoid having binding legislation passed—and then later reversing his decision. Skeptics pointed to the administration's flip-flop on China policy, promising Congress to link Chinese access to the U.S. market to human rights concerns, issuing an executive order in 1993 to forestall legislation—then reversing the order in 1994.[36]

So while D'Amato welcomed the president's executive orders, he was not prepared to abandon his efforts to pass binding legislation that would codify sanctions policy toward Iran. Even though he said, "It is not my intention to set policy, but to put pressure on the Iranians," he was not going to wait for the administration to act.[37]

MOVING TO SANCTIONS LEGISLATION

In September 1995, D'Amato introduced what he called the "Iran Foreign Oil Sanctions Act." He felt that the Achilles' heel of the Iranian regime was its need for income from energy sales. After all, the oil sector provided some 20 percent of Iran's gross domestic product (GDP). Clinton's executive orders now barred any U.S. company or citizen from any involvement in the production or sale of Iranian hydrocarbons, so the next step was to pressure foreign companies by subjecting them to U.S. sanctions should they continue to do business with the Islamic Republic. D'Amato's efforts were backed by a number of lobby groups; the influential American-Israel Public Affairs Committee (AIPAC) even provided guidance to the senator's staff in drafting the provisions of this legislation.[38] D'Amato also began to line up a powerful bipartisan group of cosponsors for his bill—including Dole and Helms but also bringing on board Republican moderates like Olympia Snowe (R-ME) and Democrats such as Dan Inouye (D-HI) and Joe Lieberman (D-CT).[39]

The Clinton administration took a two-track approach to this new bill. On the one hand, as Pollack noted, "much of the executive branch hated the D'Amato bill."[40] Throughout 1995, the administration continued to hold the line against congressional legislation that would have mandated stronger sanctions on Iran (as well as related legislation that also sought to tighten the U.S. embargo against Cuba) by arguing that these efforts were interfering with the president's prerogatives to direct U.S. foreign policy.

At the same time, however, the administration also took steps to shape the bills, to preserve the greatest degree of flexibility for the executive branch—a cause taken up by members of Congress such as Lee Hamilton (D-IN), the ranking Democratic member on the House International Affairs Committee. Lobby groups also weighed in; financial institutions such as the New York Clearing House, the Bankers Association for Foreign Trade, and the Securities Industries Association lobbied Jim Leach (R-IA), the chairman of the House Banking Committee, for modification of the legislation. Leach brought his concerns directly to House Speaker Newt Gingrich.[41] Over time, D'Amato's initial proposal was amended and tweaked; for instance, D'Amato's first draft called for sanctioning any firm exporting "sophisticated energy hardware and technology" to Iran; the administration successfully argued that it would be too difficult to effectively monitor other countries' exports to Iran. The bill was modified to sanction firms that invested more than $20 million in Iran's energy sector in a given year.[42]

Much more important was including in the draft legislation provisions for presidential waiver authority. Stuart Eizenstat, who at the time was serving in the Clinton administration as under secretary of commerce for international trade, noted:

> [I]f there is one overriding lesson from 25 years of experience with sanctions, it is the crucial need for presidential waiver authority—specifically a "national interest waiver"—in any congressionally-mandated economic sanctions legislation. National interest waivers, which are invoked by acts of the president, give U.S. officials the flexibility needed to negotiate successfully with the many parties and interests that are inevitably affected by any unilateral sanctions regime.[43]

D'Amato's legislation was passed in the Senate on 18 December 1995, and modified by amendment two days later. It, however, had no traction in the House of Representatives. Similarly, the Cuba Liberty and Democratic Solidarity Act (LIBERTAD) remained mired in the congressional process—with an explicit threat of a presidential veto should the legislation move forward. (The LIBERTAD Act was also popularly known as "Helms-Burton" after its chief congressional sponsors, Senator Jesse Helms and Congressman Dan Burton (R-IN).)

But the Clinton administration's efforts to defend the executive's freedom to maneuver began to crumble due to a series of international incidents. On 24 February 1996, MiG fighter planes of the Cuban air force shot down a civilian airplane flown by a Cuban American charity, Brothers to the Rescue, which patrolled the Caribbean looking for rafters fleeing the island. While the Cuban government claimed the plane had violated Cuban airspace, the fact that fighter jets had destroyed an unarmed craft (and that its pilots had boasted of their endeavor) created a wave of revulsion in the United States for the government of Fidel Castro. Members of Congress wanted to "take action"; the Cuban sanctions legislation suddenly found massive bipartisan support. It was now "politically infeasible for the president to oppose the Republican Congress on this issue," and four days after the incident, both houses of Congress passed the LIBERTAD Act by veto-proof margins.[44] President Clinton bowed to the inevitable and signed it into law on 12 March 1996.

The crack had now appeared. As LeLoup and Shull note, "Before the legislation, the president had been able to lift embargoes on his own, but now that authority was transferred to Congress."[45] It would now be harder to argue that the sanctions bill for Iran should be opposed on the grounds of transferring authority in foreign policy away from the president, since that precedent had now been seemingly accepted by the White House.

Just as the shoot-down of the Brothers to the Rescue plane catapulted the Helms-Burton legislation to passage, similarly, the D'Amato bill, which had languished since December 1995, found new life after two incidents. The first was the terrorist attack against a U.S. military housing site in Saudi Arabia, Khobar Towers, on 25 June 1996, which was believed to have occurred under Iranian sponsorship (although now the consensus view is that it was carried out by al Qaeda). The second was the mysterious destruction of TWA Flight 747 off of Long Island, which initially was viewed as a terrorist attack (but later judged to have been an accident).[46] Once again, those members of Congress who had been reluctant to support sanctions legislation now found it useful to be seen as "doing something."[47] The D'Amato legislation, now formally titled the Iran-Libya Sanctions Act (ILSA), passed both houses of Congress by near-unanimous majorities in mid-July 1996: 409–6 in the House of Representatives and 96–2 in the Senate. Whether members of Congress supported the

bill as a "costless act of political expediency or some form of catharsis for recent tragedies," the president now had a major political headache to deal with. The legislation was bound to create friction with American allies who already resented congressional attempts to apply U.S. sanctions to non-U.S. firms in the Helms-Burton Act[48]—but rejecting the bill would be a fight with Congress that the president was sure to lose.

Clinton "initially expressed reservations about ILSA,"[49] and his foreign policy team, even if it supported stronger measures against Iran, resisted ceding the initiative to Congress. But the president's domestic policy advisors counseled Clinton to sign the bill. After all, the legislation had passed with such overwhelming support that any presidential veto would be overridden; the legislation would therefore still be enacted, but Clinton would look weak on Iran.[50] It was, after all, an election year, and while the president generally led in the polls against his Republican challenger, Senator Bob Dole, foreign policy was still not considered to be a strong suit of the Democrats; taking a harder line on Iran (and Libya) might reassure voters that Clinton was not "soft."[51] The president signed the bill on 5 August 1996, but many considered Clinton's approval to be an act of "domestic political expediency."[52] Pollack, however, suggests that the president did want to send a strong signal to the government of Iran by supporting ILSA:

> Although I was never privy to his personal thoughts on the matter, I always suspected that for President Clinton himself, who famously weighed every aspect of an issue before making a decision, the decisive factor was probably the most obvious: Iran was run by a nasty, aggressive, anti-American regime that had just killed nineteen Americans and wounded almost four hundred more; it deserved everything it got in return.[53]

Moreover, the executive branch had been successful in softening "the sharp edges of . . . the Iran-Libya Sanctions Act";[54] the presidential waiver authority had been included, and, critically, the president had the initiative to lift the sanctions in the future if he could certify to Congress that Iran was no longer pursuing weapons of mass destruction (WMD) and was no longer a sponsor of terrorism. A time limit was also placed on the legislation; it would expire five years after passage, although this meant ILSA would lapse only after Clinton left office. Significantly, the administration was able to get, when the House and Senate conference committee met to reconcile the bills, a certain degree of discretionary authority granted to the president, rather than making the imposition of sanctions automatic.[55]

WHY WAS LIBYA ADDED?

D'Amato's original legislation only dealt with Iran. How—and why—were Libya sanctions added to the bill?

This came about through the efforts of Senator Edward "Ted" Kennedy (D-MA), who added sanctions against Libya at the behest of the families of Pan Am Flight 103, the plane downed by a bomb planted by Libyan agents in December 1988. The two Libyans responsible for this act remained under the protection of Colonel Mu'ammar al-Qaddafi, the leader of the Libyan government, who refused to surrender them to British authorities to face trial.

Libya had already been placed under sanctions by the United Nations Security Council, in Resolutions 748 (31 March 1992) and 883 (11 November 1993), which prohibited investment in its energy sector and the export of a broad range of goods and services, particularly anything to do with the oil industry. The United States was already complying with these sanctions, and there were additional restrictions, enacted by President Reagan in an executive order that the subsequent administrations of George H. W. Bush and Bill Clinton extended. Just as D'Amato was worried that Iran sanctions passed by executive order could be overturned without congressional input, existing Libya sanctions were also not codified in U.S. law. If the executive branch wanted to instruct its U.S. ambassador to the United Nations to vote in the Security Council in favor of lifting sanctions, there was nothing requiring the president to get the approval of Congress.

But with Colonel Qaddafi keeping a "low profile," there were no recent attacks or incidents of Libyan-sponsored terrorism to create a groundswell of congressional support for new penalties directed against Libya. If a Libya-sanctions bill were introduced as a standalone bill, it might languish in committee and never even be brought to a floor vote. So Kennedy tacked on provisions sanctioning Libya to D'Amato's Iran bill after it had initially passed in December 1995, in the form of an amendment to the legislation. Kennedy did this "late in legislative negotiations and without committee consideration," as Eizenstat notes. He also never consulted the Clinton administration or solicited any feedback from the State Department before offering his amendment.[56]

The Libya sanctions appeared in a maneuver sometimes described as a "virgin birth," meaning that Kennedy's amendment had not gone through a process of hearings and deliberations but was tacked on at the end and subject to a simple up-or-down vote. As Kathleen Walsh points out, "[T]here have been increasing instances in recent years of Congressional Members inserting last-minute provisions into bills at the latter stages of consideration, such as in the conference reports that result from joint House and Senate conference committees charged with producing a common text. . . ."[57]

Kennedy got support from his fellow senators, and later convinced members of the House to keep his Libya sanctions intact by arguing that "Congress should not compromise with terrorism" (implying that rejecting his Libya sanctions in voting for D'Amato's Iran bill was supporting terrorism). When the House and Senate versions were sent to conference to create a final text, Kennedy urged the House to join the Senate in "this fundamental principle" by making any sanctions that would apply to Iran apply to Libya as well.[58]

For D'Amato, joining Libya sanctions to his bill got him Senator Kennedy as his legislation's cosponsor, preventing ILSA from being characterized as an attempt by a Republican Congress to take away the rightful authority of a Democratic president and giving the bill a bipartisan cast. Now, even if the UN Security Council lifted sanctions on Libya, the United States could only do so once the president had certified to Congress that Libya had fulfilled the conditions set in those UN resolutions to American satisfaction.

IMPLEMENTATION: CLINTON AND THE CONGRESS CLASH

Clinton's foreign policy team was strongly opposed to any congressional attempts to mandate sanctions, particularly secondary sanctions directed not against the target country, but against allies in an effort to get them to comply with U.S. wishes. At times, it seemed that Senator D'Amato was trying to set foreign policy. Even before the ILSA legislation had passed, he was already sending letters to the French energy firms Elf Aquitaine and Total declaring, "We in Congress view any business deal that provides Iran with the hard currency to develop its energy sector as a direct threat to U.S. national security," and when Turkey announced a gas pipeline deal with Iran, D'Amato wrote first to Secretary of State Warren Christopher and then directly to President Clinton to "place sanctions on Turkey" if the deal went forward.[59]

Speaking about legislation like ILSA (and other sanctions bills passed by Congress), Eizenstat says flatly, "I staunchly opposed these efforts as interfering with the president's ability to conduct foreign policy."[60] Some members of the administration also quietly voiced their disapproval of congressional action; "American policy makers have told some allied diplomats privately that if it were not for the 1996 law—and concern that Iran will be proven responsible for the truck-bomb attack on Khobar Towers in Saudi Arabia . . . Washington would be reviewing its Iran policy."[61] Not surprisingly, after the law was enacted, the executive branch moved to reassert the initiative in determining how and when to apply ILSA. An early indication of this occurred in 1997, when the Clinton administration decided to take no action to block a proposed pipeline that would carry gas from Turkmenistan across Iranian territory to Turkey (where it could then be shipped to Europe); decreasing Europe's dependence on Russian gas was, after all, another major foreign policy priority of the United States government.[62]

Immediately after ILSA and the Helms-Burton Act were passed by Congress, leading American allies—the European Union, Canada, and Japan—passed new regulations forbidding their companies from complying with any U.S. investigation into whether their commercial activities in Iran, Libya, or Cuba violated U.S. statutes. The European Commission's Trade Commissioner, Sir Leon Brittan, argued that these laws were "extra-territorial"—"an effort by the United States to control the international conduct of friendly foreign countries."[63] The Clinton administration did not want to aggravate transatlantic relations by stringent enforcement of the new act.

A major test came in 1997, when an international consortium led by France's Total, Russia's Gazprom, and Malaysia's Petronas—all three companies with significant state ownership—announced work on a project to develop the South Pars natural gas field in Iran. Europeans and Asians alike argued that their need for energy security outweighed any compliance with U.S. directives. (Other European projects in Iran and Cuba were threatened by U.S. sanctions as well.) Leading members of Congress, in turn, made it clear that should Total go ahead, ILSA sanctions would be triggered. Congressman Gilman made this clear at a hearing of the House International Relations Committee (23 July 1997):

> More troubling still are recurrent reports that foreign firms, particularly the French oil company Total, might be on the verge of signing contracts with Iran to develop the large South Pars gas project expected to require more than $2 billion in capital. In a letter I received on July 15 from the chairman and chief operating officer of Total, Mr. Thierry Desmarest, he indicates that increased investment in Iran will, and I quote, "help further stimulate democratic reform in Iran." It would, in fact, appear that this company is intent on proceeding with its contract with Iran, which is clearly a sanctionable event under the terms of ILSA.
>
> With recent indications from the French Government that it is willing to support French firms in Iran with a new $500-million insurance line of credit, we need to enter into an immediate high-level dialog with France to make certain that it is aware of the implications of imposing sanctions on its leading oil exploration and development firm.[64]

As congressional pressure grew, William Ramsay, deputy assistant secretary of state for energy, resources, and economic sanctions, testified before D'Amato's Senate Banking, Housing, and Urban Affairs Committee (30 October 1997) that the administration was considering sanctions on Total and other European firms: "We are moving expeditiously to ensure that we have all the facts in both cases to enable us to make the right decisions and apply the law correctly. We will take appropriate action once our deliberations are complete."[65] In November, Gilman; Congressman Sam Gejdensen (D-CT), the ranking Democrat member of the House International Affairs Committee; and 87 other representatives sent a letter to Clinton, urging him to apply sanctions. Later, Gilman went so far as to argue that if the president refused to sanction Total, he would be in violation of the law, and "refusing to enforce the law in this case is not an option, not least because your oath of office requires you to see that the law is faithfully executed."[66]

To avoid a major international incident, Clinton dispatched Eizenstat to Europe to meet with Brittan and find a solution. Eizenstat relates that, before he departed, he sat down for a "private meeting" with Senator D'Amato: "We reached an understanding that I was to play the role of 'good cop'—holding out the carrot of a presidential waiver—while D'Amato and his colleagues would keep to their 'tough cop' role by refusing to modify or scrap the legislation itself."[67]

At the EU-U.S. summit on 18 May 1998, the fruits of Eizenstat's diplomacy were announced: the European Union committed itself to a stricter export-control regime to ensure that dual-use technologies were not sent to Iran. Moreover, the Europeans agreed to work more closely with the United States on counterterrorism and nonproliferation matters. Parallel negotiations with Russia led to Moscow instituting its first comprehensive export-control program vis-à-vis Iran.[68] As a result, Secretary of State Madeleine Albright advised the president that "waivers would be more effective than sanctions in achieving the objectives of ILSA—curbing Iran's support for WMD programs and terrorism."[69] Using the provisions in ILSA, a 9(c) waiver—under which the administration could opt not to impose sanctions against companies for specific investment projects undertaken in Iran—was

granted to Total, Gazprom, and Petronas, protecting them from any U.S. sanctions for their involvement in the South Pars project.

The granting of these waivers reflected a new confidence that the administration did not have to accept congressional dictation on policy. Despite what appeared to be a very clear legislative intent—sanctioning firms that invested in Iran—ILSA suffered from two deficiencies. The first was that the definition of investment was still unclear. Rex J. Zedalis, in analyzing the provisions of the act, noted:

> [T]here is reason to believe that Congress may have intended service contracts of all sorts to fall outside the Act. However, undertakings simply to provide the financial backing to support service contracts are not affected by the Act. . . . The best available evidence . . . strongly suggests that financing falls outside what the Act punishes, just as with service contracts. The evidence also provides solid support for excepting from sanctions one who is guilty of nothing more than an ownership or control connection with another entity violating the Act.[70]

The State Department was charged with drafting the regulations for how ILSA was to be implemented. These guidelines ended up having "significant ambiguity and loopholes."[71]

Moreover, the legislation never set any "time limit for the administration to make up its mind" as to whether to impose sanctions or not.[72] As a result, as Eizenstat argued,

> [i]ndeed, the nature of ILSA is such that even though it (and the Helms-Burton Act) were passed with great fanfare, many in Congress have simply lost all desire to see them implemented because of the collateral damage that would be done to U.S. relations with allies in Europe and elsewhere, many of which are already raw on a range of other issues. Secondary sanctions such as ILSA breed a counter-productive culture of non-compliance, because the costs of implementation are perceived as higher than the benefits of enforcement. This phenomenon has effectively undermined the Act's raison d'être. There are, for example, outstanding cases of European investments undergoing State Department "investigation" for years, with no action.[73]

To further seize the initiative back from Congress, the Clinton administration set up a "sanctions group" in the State Department in January 1998, headed by Eizenstat, whose purpose was to assess "the costs and benefits of potential sanctions." Members of Congress might press for sanctions to be levied, but now a decision would be based on the report of this State Department entity.[74] Congressman Gilman complained: "It seems to us that the Administration has given itself broad latitude to determine whether or not to impose sanctions under ILSA. If that be the case, we would like to know why that is the case."[75]

In the wake of the Total, Petronas, and Gazprom waivers, which caused a firestorm of criticism from not only D'Amato but other members of the Senate such as Sam Brownback (R-KS) and Trent Lott (R-MS), Congress geared up to pass yet another set of sanctions directed against Iran, targeting foreign companies that might aid Iran's nascent ballistic missile program. The Iran Missile Proliferation Sanctions Act was proposed, in part, to goad

the executive branch into taking action. One of its leading supporters, Congressman Doug Bereuter (R-NE), explicitly highlighted a lack of trust in the executive branch, especially the State Department, in explaining the rationale for the bill:

> Frankly speaking, Mr. Speaker, this legislation would be unnecessary if the executive branch were willing to comply with existing law governing missile technology controls. This is not simply a criticism of this President or this administration, for previous Presidents have been equally reluctant to enforce the law when it comes to sanctions on these crucial matters.
>
> When an administration, this one or a previous one, continually refuses to invoke the law . . . because the resulting sanctions would reduce the State Department's flexibility, a word we hear often, it demeans the law. It encourages this body to pursue ever more stringent sanctions. Mr. Speaker, this Member hopes that this body can get out of the business of imposing new sanctions, but this will not happen until the executive branch, this one, the previous ones, come into compliance with the law, *respect the law as Congress enacts it* [emphasis added].[76]

Having given in to Congress on ILSA, the president's foreign policy team argued that Clinton now needed to push back against Congress. Appearing before the House International Affairs Committee (3 June 1998), Eizenstat flatly told the members: "The President's senior advisors are recommending that the Iran Missile Proliferation Act . . . be vetoed because of its low standard of evidence, its unworkable waiver standard, and because its inflexible and indiscriminate requirement to impose sanctions would be counterproductive to our nonproliferation objectives."[77]

The administration's objections were ignored; both the House and Senate passed the bill by large margins (90–4 in the Senate; 392–22 in the House). But President Clinton decided to veto the legislation on 23 June 1998. In justifying his decision, Clinton declared that the legislation "is indiscriminate, inflexible, and prejudicial to [U.S. nonproliferation] efforts, and would in fact undermine the national security objectives of the United States." He went on to point out that some of the bill's provisions "could interfere with certain of my exclusive constitutional powers."[78]

However, to take the wind out of any possible attempt to override his veto, Clinton then issued Executive Order 13094 on 28 July 1998, setting out sanctions that would be applied to any company determined to be aiding another country's WMD programs. Under this authority, seven Russian companies—Baltic State Technical University, Europalace 2000, Glavkosmos, Grafit, INOR Scientific Center, MOSO Company, and Polyus Scientific Production Association—were affected. These firms were now barred

> indefinitely from all exports to the United States; all U.S. government assistance, procurement and contracts (including termination of all existing contracts and assistance); and importation of all defense items or defense services. The firms have also been added to the Entity List, requiring them to obtain a license for all products (not just dual-use and

> Munitions List items) imported from the United States—with a presumption of denial for all licenses.[79]

The White House announced that this measure would be forthcoming on 15 July which in turn caused the House of Representatives to abandon a scheduled vote on whether to override the president's veto.[80]

Two years later, Congress sent a much-amended version of this bill to the president for signature. In contrast to the mandatory sanctions approach found in ILSA, the Iran Nonproliferation Act of 2000 merely required the president to present a list of firms aiding Iran's missile and nuclear programs and encouraged him to use his authority found in existing executive orders to order sanctions. However, "the onus for action remains soundly with the president. Should the president decide not to take action against a particular entity, congressional notification and a written explanation is required, but a waiver is not."[81] Since this new legislation did not constrain the president's powers, Clinton signed it into law.

How much did congressional legislation impact the president's ability to conduct foreign policy? That issue has come up in assessing whether the United States missed an opportunity to engage with Iran during the presidential administration of the reformist leader Mohammad Khatami. The argument is that the president was unable to offer sufficient "carrots" to empower the reformers by showing that a more conciliatory policy toward the West would bring rewards. Others argue, however, that Khatami and his associates were never in a position to address U.S. concerns about nuclear proliferation and terrorism, and that initial steps taken by the Clinton administration were not reciprocated.[82]

Clinton could use his discretionary authority to modify some of the sanctions against Iran, issuing executive orders that modified U.S. policy by permitting the sale by U.S. companies of food and medicine to Iran (April 1999), allowing Boeing to sell spare parts to Iran in the name of passenger safety (December 1999), and permitting Iran to export pistachios, caviar, and carpets to the United States (March 2000).[83] By stressing how relaxing these sanctions would benefit U.S. farmers and businesses, rather than focusing on them as any sort of concession to Iran, the administration received far less pushback from Congress. (It also provided a template that would be used again in discussing modifications of U.S. sanctions on Cuba, by focusing on trade benefits to the United States rather than on any advantages being extended to Fidel and Raul Castro.) Strikingly, the key spokesman on the lifting of sanctions prohibiting the sale of U.S. food and agricultural products for the Clinton team was Dan Glickman, the secretary of agriculture. In his remarks, the secretary briefly noted that the change reflected "a humanitarian principle that basics, such as food and medicine, should not be used as a tool of foreign policy" but spent more time focusing on the domestic benefits:

> Farmers in this country know that we are committed to the expansion of U.S. agricultural export opportunities and that we will not restrict exports except in the most compelling circumstances. American agricultural export shares in sanctioned markets are frequently

> captured by our global competitors. While this new policy does not mean automatic approval of agricultural sales, it places the presumption on the side of approval and gives U.S. producers and exporters an opportunity to compete in more markets.
>
> With farm prices still low and global demand still soft, this action could not have come at a better time. Our farmers are hurting, and they deserve every opportunity to reach out to as many potential consumers as possible around the world. American farmers produce the very best food that the world has to offer, and we cannot afford to handicap them by ceding potentially lucrative markets to our global competitors.[84]

But ILSA tied the president's hands from being able to offer more substantial carrots. Ray Takeyh, a longtime observer of U.S.-Iranian relations, concluded: "A more substantial offer of sanctions relief . . . including allowing U.S. investments in Iran's critical energy sector and an offer to discuss the return of Iran's frozen assets might have tipped the balance in favor of the reformers."[85]

THE TRAJECTORY OF ILSA IN THE BUSH AND OBAMA ADMINISTRATIONS

The Iran-Libya Sanctions Act was set to expire in 2001. Given that there was now a Republican administration in the White House, there was some expectation that the legislation would not be renewed by a Republican-dominated Congress. But having "struggled" with the executive branch over foreign policy, Congress was now reluctant to abandon any advantages it had obtained. Once again, Senator Patrick Moynihan's famous "Iron Law of Emulation" was demonstrated: "[W]henever any branch of the Government acquires a new technique which enhances its power in relation to the other branches, that technique will soon be adopted by those other branches as well."[86] In other words, the president, having claimed authority to unilaterally set and lift sanctions by executive order, was now confronting a Congress that wanted this power in the hands of the legislature.

So Senator Charles Schumer (D-NY), in explaining his support for reauthorizing the legislation, argued, "If we're not going to maintain ILSA, we're not going to maintain any sanctions policy at all."[87] Members of Congress argued that ILSA should be renewed, on the grounds that it "was slowing investment in both countries" and that both Iran and Libya would "view ILSA's expiration as a concession, reducing their incentive for further moderation."[88]

The George W. Bush administration argued that ILSA should be extended only for two more years, in part to address those concerns. Congress, however, decided on another five-year term for ILSA. The definition of investment was also tightened, to include additional investments in preexisting projects that had been in operation even before ILSA had been passed in 1996.[89] However, during the second term of ILSA's existence, no companies were sanctioned by the administration and no waivers were issued to avert sanctions, even though, between the granting of the waivers to Gazprom, Total, and Petronas for the South Pars project and ILSA's second-term expiration in 2006, some $11.5 billion in investment in Iran's energy sector had been pledged (although not all projects were in fact initiated).[90]

The Libyan government, meanwhile, had begun to accommodate the demands of the international community—turning over the Pan Am bombing suspects for trial in the Netherlands, renouncing support for terrorism, and terminating its WMD programs. On 12 September 2003, the UN Security Council formally lifted all sanctions against Libya. The executive branch chose not to veto this resolution, although Secretary of State Colin Powell made it clear that "[t]he lifting of sanctions at the United Nations will not affect U.S. bilateral measures, which will remain in place."[91] But after the Libyan government took additional steps to reassure the United States—including permitting the transport to America of its WMD infrastructure, President Bush formally certified to Congress on 23 April 2004 that Libya had fulfilled the criteria laid out by Congress for lifting sanctions.

Based on their experiences with how ILSA had been implemented by both the Clinton and Bush administrations, some members of Congress wanted to tighten the rules yet again and eliminate the wiggle room enjoyed by the executive branch. Congresswoman Ilana Ros-Lehtinen (R-FL) and Senator Rick Santorum (R-PA) introduced draft bills in 2005 that would remove any sunset provisions from ILSA, making it last indefinitely unless repealed by Congress in the future and would set a higher bar for the president, requiring the executive branch to certify that Iran was no longer a threat to U.S. national security or to U.S. allies, before sanctions could be lifted. There were other efforts to legislate triggers that would require executive branch action. However, just as the Clinton administration had argued for modifications in the original ILSA legislation and had vetoed the Iran Missile Proliferation Sanctions Act, so too did the Bush administration make the case for preserving the flexibility and the freedom of action of the executive branch. President Bush signaled that he could not support the original Ros-Lehtinen and Santorum versions, "on the grounds that Administration flexibility would be limited and the bills would hurt the U.S. effort to work with its allies to curb Iran's nuclear program." Compromise language was found and, important to an administration continuing to make progress with Libya, there was no effort to reimpose congressional supervision of the executive branch's Libya policy. The revised legislation passed both houses of Congress and was signed into law as the Iran Sanctions Act (ISA) on 30 September 2006.[92]

Once again, the "invitation to struggle" between both branches of government was on display. Sanctions on Iran were extended to 31 December 2011. Moreover, the sanctions were broadened beyond the energy sector to include trade and investment that might bolster Iran's military capabilities. Significantly, earlier executive orders governing sanctions on Iran were now codified into the legislation—so that the president no longer has unilateral authority to lift sanctions on Iran without informing Congress. Moreover, once an investigation was launched into whether a company had violated sanctions, Congress placed a definite time limit on that investigation; no longer could the executive branch keep investigations going for an indefinite time as a way to avoid having to take action. However, per the requests of the Bush administration, the law did not require the president to have to initiate investigations of investment activity in Iran by foreign companies, but advised that he "should" pursue such matters. In addition:

> The President still retains the authority he had under ILSA to waive the need for investigation and imposition of sanctions for a period of 6 months if he certifies to Congress that the waiver is "vital to the national security interests of the U.S." This modification of the waiver provision raises the threshold for the President to justify exercising such waivers, but does not eliminate the ability to do so.[93]

When Barack Obama was inaugurated as president in January 2009, the tug-of-war between the executive and legislative branches continued.[94] President Obama had hoped to achieve a diplomatic breakthrough with Iran, but as the year went on, the policy of engagement did not seem to bear much fruit. At the same time, efforts to build an international coalition to enforce more stringent sanctions against Iran foundered. Once again, members of Congress proposed new sanctions legislation, this time to penalize any company that supplies refined petroleum products, especially gasoline, to Iran. (Despite being a producer of oil, Iran does not have sufficient refining capacity to be self-sufficient in oil-related products including fuel.)

There is now an established pattern. Bills introduced in the House (by Congressman Howard Berman (D-CA)) and related proposals in the Senate (introduced by Democratic Senators Chris Dodd (D-CT) and Evan Bayh (D-IN)) would amend ISA so that sanctions could be placed on companies engaging in the gasoline trade with Iran. The Obama administration argued against the legislation as constraining the president's powers and flexibility; in December 2009, Deputy Secretary of State Jim Steinberg addressed a letter to Senate Foreign Relations Committee Chair John Kerry (D-MA) in which he noted:

> As I testified before the Congress in October, it is our hope that any legislative initiative would preserve and maximize the President's flexibility, secure greater cooperation from our partners in taking effective action, and ultimately facilitate a change in Iranian policies. However, we are entering a critical period of intense diplomacy to impose significant international pressure on Iran. This requires that we keep the focus on Iran. At this juncture, I am concerned that this legislation, in its current form, might weaken rather than strengthen international unity and support for our efforts. In addition to the timing, we have serious substantive concerns, including the lack of flexibility, inefficient monetary thresholds and penalty levels, and blacklisting that could cause unintended foreign policy consequences.[95]

Members of Congress have pushed back. At the end of January, a bipartisan group of Senators (Jon Kyl (R-AZ), Evan Bayh, Robert Casey (D-PA), Benjamin Cardin (D-MD), Charles Schumer, Joseph Lieberman (I-CT), John McCain (R-AZ), Johnny Isakson (R-GA), and David Vitter (R-LA)) sent a letter directly to President Obama. Noting that his deadline for seeing "serious movement" from the Iranians in terms of addressing U.S. concerns had passed (as of 31 December 2009), the senators urged the president to act:

> As you know, your Administration has ample authority under previous Security Council resolutions, as well as the Iran Sanctions Act, the Iran Freedom Support Act, the Iran–Syria–North Korea Non-Proliferation Act, and numerous other existing laws and

> executive orders—*some of which have gone largely unenforced*—to act now. We are also committed to quickly passing new comprehensive sanctions legislation in Congress that will provide you with additional authorities to pressure Iran, and *urge you to make full use of them* [emphases added].[96]

Berman's bill passed the House 412–4 in December; provisions of Berman's legislation were incorporated into a larger Senate proposal. For a time, Senate Majority Leader Harry Reid (D-NV) delayed bringing the measure to a vote in order to give the administration more flexibility in pursuing diplomatic options; under pressure from a bipartisan coalition of senators, the Senate version of the bill was passed by unanimous consent on 28 January 2010. Senator Lieberman also brokered a "no amendment" agreement whereby senators such as John McCain consented not to try to amend the bill (to avoid new "virgin birth" amendments) in return for their concerns being addressed when the Senate and House meet in conference committee to prepare a final version of the Iran sanctions bill. At the same time, given the tendency of presidential administrations to weaken congressional sanctions legislation at this point in the process, senior Republican congressional aides flatly declared, "The next battle will be to make sure the State Department doesn't water this thing down."[97] Members of Congress are also calling on the president not only to sign the bill but to enact sanctions against some 20 companies they believe are in violation of ISA.[98]

Building on "lessons learned" from the ILSA experience, members of Congress are also looking to rein in the power of the executive branch to issue exemptions. "The formula that a cooperating country is a country that president determines is cooperating is probably not going to go anywhere," one senior congressional aide said. "The criteria has to be genuinely meaningful and strict."[99]

However, the congressional leadership did accede to the administration's wishes and slowed down the legislative process to give the Obama administration more time to gain international support for stronger UN sanctions. By early April 2010, there was consensus that the president should be able to exhaust all diplomatic efforts before Congress moved ahead with unilateral sanctions.[100] However, if the United Nations does not adopt sufficiently stringent sanctions, Congress's putting a new round of unilateral measures on the president's desk is guaranteed.

What now remains undecided is whether the UN Security Council will adopt new sanctions on Iran and whether the likely shape of those sanctions—specifically targeting companies and entities involved in the nuclear program rather than the broader set of economic instruments favored by many in Congress—will meet congressional requirements. The executive branch may find itself having to maneuver between the legislature and key players in the international political system as it tries to shape Iran policy.

Lee Hamilton, summing up his years of experience on the Hill, had this to conclude about the shared roles of Congress and the executive branch in the formulation of U.S. foreign policy: "I believe that a partnership between the President and the Congress that is characterized by a creative tension produces a foreign policy that better reflects the American national interests and the values of the American people." But he also acknowledged the problems inherent in that relationship. For the president's staff, and especially the diplomats in the White House, "Congress [is] often acting erratically in foreign policy. It is often engaged primarily for political reasons, displaying little sophistication about very complex and difficult problems." Members of the House and Senate recoil when "[p]residents make the argument, 'Give me unchecked power to make and conduct American foreign policy.'"[101] The battles between the executive and legislative branches over Iran sanctions policy illustrate this larger picture.

Notes

1. Lance T. LeLoup and Steven A. Shull, *The President and Congress: Collaboration and Combat in National Policymaking* (New York: Longman Publishing, 1999), 117.
2. Sean C. Sullivan and David A. Williams, "Crafting Foreign Policy. Understanding the Role, Power and Style of the Chief Executive: The National Security Decision-Making Process and How Presidential Personalities Matter" (paper, U.S. Naval War College, August 2004), 1–2.
3. Quoted in ibid., 3.
4. LeLoup and Shull, *The President and Congress,* 118.
5. Solomon Major and Anthony J. McGann, "Caught in the Crossfire: 'Innocent Bystanders' as Optimal Targets of Economic Sanctions," *Journal of Conflict Resolution* 49, no. 3 (June 2005): 337.
6. Richard N. Haass, "Sanctioning Madness," *Foreign Affairs,* November/December 1997, 75.
7. Kenneth R. Mayer, "Executive Orders and Presidential Power," *Journal of Politics* 61, no. 2 (May 1999): 452.
8. I have relied on the information provided in Case 85-1, "US, Commonwealth v. South Africa (1985–91: Apartheid)," in *Case Studies in Sanctions and Terrorism,* assembled by the Peterson Institute for International Economics, available at http://www.iie.com/research/topics/sanctions/southafrica.cfm, for the overall picture of how South Africa sanctions moved through the process.
9. The claim is advanced that this was the first override of a presidential veto of a foreign policy–related bill in the twentieth century. Cf. Lynn Noment, "How African-Americans Helped Free South Africa," *Ebony,* August 1994.
10. Richard Haass, "Fatal Distraction: Bill Clinton's Foreign Policy," *Foreign Policy,* Fall 1997, 114.
11. Amy Borrus and Douglas Harbrecht, "Clinton's Biggest Foreign Policy Headache: Congress," *Business Week,* 28 November 1994, 74.
12. Jim Mann, "Clinton's Foreign Policy Success May Rely on Making Peace with Congress," *Los Angeles Times,* 11 November 1996, available at http://articles.latimes.com/1996-11-11/news/mn-63642_1_foreign-policy.
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14. Ray Takeyh, *Hidden Iran: Paradox and Power in the Islamic Republic* (New York: Times Books, 2006), 113.
15. Daniel Pipes, "Two Cheers for Dual Containment: Testimony Prepared for the Subcommittee on the Near East and South Asia[,] Committee on Foreign Relations,

United States Senate," danielpipes.org, 2 March 1995, http://www.danielpipes.org/265/two-cheers-for-dual-containment.

16. "US Senator Proposes Total Sanctions," *Middle East Economic Digest,* 10 February 1995.
17. Ibid.
18. Kimberly Ann Elliott and Gary Clyde Hufbauer, "Same Song, Same Refrain? Economic Sanctions in the 1990s," *American Economic Review* 89, no. 2 (May 1999): 405.
19. "D'Amato and the Jewish Vote," letter to the editor, *Commentary,* August 1993, available at http://www.commentarymagazine.com/viewarticle.cfm/d-amato---the-jewish-vote-14110.
20. Kenneth M. Pollack, *The Persian Puzzle* (New York: Random House, 2004), 270.
21. Michael S. Lelyveld, "Bill to Ban US Trade with Iran Hits Nerve," *Journal of Commerce,* 22 February 1995, 1A.
22. Ibid.
23. "White House and a Senator Criticize Conoco Oil Deal with Iran," *New York Times,* 8 March 1995, A7.
24. Jim Lobe, "U.S.-Iran: Clinton Affirms Shaky Policy in Blocking Oil Deal," Inter Press Service, 14 March 1995.
25. Sanam Vakil, "Iran: Balancing East against West," *The Washington Quarterly* 29, no. 4 (Autumn 2006): 52.
26. Lobe, "U.S.-Iran."
27. Mayer, "Executive Orders and Presidential Power," 445, 462.
28. John F. Harris, *The Survivor: Bill Clinton in the White House* (New York: Random House, 2005), 169–170.
29. A. M. Rosenthal, "On My Mind; Plugging the Leak," *New York Times,* 14 March 1995, A25, available at http://www.nytimes.com/1995/03/14/opinion/on-my-mind-plugging-the-leak.html?pagewanted=1.
30. Mann, "Clinton's Foreign Policy Success May Rely on Making Peace with Congress."
31. Mark E. Manyin, *The Vietnam-U.S. Normalization Process,* CRS Issue Brief for Congress, IB98033 (Washington, D.C.: Congressional Research Service, 2005), CRS-4, available at http://www.fas.org/sgp/crs/row/IB98033.pdf.
32. LeLoup and Shull, *The President and Congress*, 125.
33. George Stephanopoulos details the incident, which resulted from an interview of President Clinton by *New York Times* columnist Tom Friedman, in his memoirs. See *All Too Human: A Political Education* (Boston, MA: Little, Brown, 1999), 157–159.
34. LeLoup and Shull, *The President and Congress*, 124.
35. Harris, *The Survivor,* 407.
36. Rosenthal, "On My Mind; Plugging the Leak."
37. Quoted in Hossein Alikhani, *Sanctioning Iran: Anatomy of a Failed Policy* (London: I.B. Tauris, 2000), 292.
38. Hillel Kuttler, "Clinton Signs Bill to Punish Companies Dealing with Iran, Libya," *Jerusalem Post,* 6 August 1996, 1; Jeffrey L. Snyder, "ILSA Perplexes Foreign Firms," *National Law Journal,* 7 October 1996, C1. Many lobby groups offer assistance to congressional staff to draw up draft bills, speeches, and talking points. In his classic work on Washington, *The Power Game,* Hedrick Smith observed that AIPAC staffers "draft speeches and legislation for many members of both House and Senate" on areas of Middle East policy, and noted that this was a common practice in many areas of domestic and foreign policy, where lobbyists and specialists "know more about the subject than the staff or the committee members." Hedrick Smith, *The Power Game: How Washington Works* (New York: Ballantine Books, 1988), 234.
39. Alikhani, *Sanctioning Iran,* 293.
40. Pollack, *The Persian Puzzle,* 287.
41. Alikhani, *Sanctioning Iran,* 301–302.
42. Kenneth Katzman, *The Iran-Libya Sanctions Act (ILSA),* CRS Report for Congress, RS20871 (Washington, D.C.: Congressional Research Service, 2006), CRS-3, available at http://fpc.state.gov/documents/organization/74902.pdf.
43. Stuart E. Eizenstat, *Do Economic Sanctions Work? Lessons from ILSA and Other U.S.*

Sanctions Regimes (Washington, D.C.: Atlantic Council, 2004), viii.

44. LeLoup and Shull, *The President and Congress,* 124.
45. Ibid., 125.
46. Ken Pollack argues that the impact of Khobar Towers is what pushed the legislation forward; cf. Pollack, *The Persian Puzzle,* 287. Timothy S. Dunning sees both Khobar Towers and the TWA flight as precipitating passage of ILSA. See his "D'Amato in a China Shop: Problems of Extraterritoriality with the Iran and Libya Sanctions Act of 1996," *University of Pennsylvania Journal of International Economic Law* 19, no. 1 (1998): 171. He cites reporting in both the *Financial Times* and the *New York Times* to back up his claim. See Nancy Dunne and Robert Corzine, "Politics Sets Tone for Trade Barriers," *Financial Times,* 25 July 1996, 4; and Steven Erlanger, "Standoff with Iraq: The Strategy; Crumbling Walls: U.S. Effort to Isolate Both Iran and Iraq Is Fraying Badly," *New York Times,* 11 November 1997, A10.
47. Richard Haass and others have warned that sanctions policies "should not be used as a means of expression. Foreign policy is not therapy; its purpose is not to make us feel good but to do good." Haass, "Sanctioning Madness," 80. The realities of the domestic political system, however, make it difficult to do nothing. Haass himself admits, "In Washington, it is difficult to beat something with nothing." Ibid., 84.
48. Dunning, "D'Amato in a China Shop," 171.
49. Ibid.
50. Pollack, *The Persian Puzzle,* 287–288.
51. For a sense as to how reelection pressures were driving administration policy, see Bob Woodward, *The Choice* (New York: Simon and Schuster, 1996), esp. 202–203, where domestic advisors are counseling the president to take a harder line on "the 'rogue states' such as Iran, Iraq and Libya."
52. Vahe Petrossian, "US Escalates War of Words against Iran," *Middle East Economic Digest,* 30 August 1996, 2, 3.
53. Pollack, *The Persian Puzzle,* 288.
54. Elliott and Hufbauer, "Same Song; Same Refrain?" 405–406.
55. Jeanne S. Holden, "Senate Passes Bill Curbing Trade with Iran and Libya," USIA release, 17 July 1996. Archived at http://www.globalsecurity.org/wmd/library/news/iran/1996/27367915-27373092.htm.
56. Eizenstat, *Do Economic Sanctions Work?* 3, 7.
57. Kathleen Walsh, "Legislative Affairs and Congressional-Military Relations" (paper, U.S. Naval War College, May 2008), 5.
58. Holden, "Senate Passes Bill Curbing Trade wtih Iran and Lybia."
59. Alikhani, *Sanctioning Iran,* 298, 326.
60. Eizenstat, *Do Economic Sanctions Work?* 7.
61. Erlanger, "Standoff with Iraq," A10.
62. On the lack of interest in sanctioning the Turkmenistan pipeline, see Colin MacKinnon, "Administration in Hot Seat Thanks to AIPAC-Drafted Iran-Libya Sanctions Act," *Washington Report on Middle East Affairs,* March 1998, 50, available at http://www.washington-report.org/backissues/0398/9803049.html; on energy objectives, see Sheila Heslin, "The New Pipeline Politics," *New York Times,* 10 November 1997, available at http://chss.montclair.edu/english/furr/pol/wtc/heslinnwpipelinepols.html. Heslin was senior director for Russian, Ukrainian, and Eurasian affairs at the National Security Council from 1995 to 1996.
63. Eizenstat, *Do Economic Sanctions Work?* 3; see also Dunning, "D'Amato in a China Shop," 189–192.
64. A transcript of the hearing is archived at http://commdocs.house.gov/committees/intlrel/hfa44881.000/hfa44881_0f.htm.
65. A transcript of Ramsay's prepared statement is archived at http://banking.senate.gov/97_10hrg/103097/witness/ramsay.htm.
66. Quoted in Alikhani, *Sanctioning Iran,* 329.
67. Eizenstat, *Do Economic Sanctions Work*? 3.
68. Ibid., 4.
69. "Issues in U.S.-European Relations: An Address by Under Secretary of State Stuart E. Eizenstat," *Nixon Center Perspectives* 3,

no. 6 (16 October 1998), http://www.nixoncenter.org/publications/Perspectives/eizenstat3_6.htm.

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71. Alikhani, *Sanctioning Iran,* 319.
72. MacKinnon, "Administration in Hot Seat Thanks to AIDIC-Drafted Iran-Lybia Sanctions Act," 49.
73. Eizenstat, *Do Economic Sanctions Work?* 9.
74. MacKinnon, "Administration in Hot Seat Thanks to AIDIC-Drafted Iran-Lybia Sanctions Act," 50.
75. House Committee on International Relations, *Iran-Libya Sanctions Act—One Year Later,* 105th Cong., 1st sess. (23 July 1997), available at http://commdocs.house.gov/committees/intlrel/hfa44881.000/hfa44881_0f.htm.
76. See his remarks in the *Congressional Record* for 12 November 1997, and archived at http://ftp.fas.org/spp/starwars/congress/1997/971112-iran.htm.
77. A copy of Eizenstat's unclassified testimony is available at http://www.iranwatch.org/government/US/Congress/Hearings/hirc-060398/us-hirc-eizenstat-060398.htm.
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79. Howard Diamond, "Clinton Vetoes Sanctions Bill; Sets, Imposes New Sanctions on Russia," *Arms Control Today*, June/July 1998, available at http://www.armscontrol.org/act/1998_06-07/srsjj98.
80. Ibid.
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83. Pollack, *The Persian Puzzle,* 323–324.
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85. Takeyh, *Hidden Iran,* 116.
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87. Senate Committee on Housing, Banking, and Urban Affairs, *Hearing on the Reauthorization of the Iran and Libya Sanctions Act,* 107th Cong., 1st sess. (28 June 2001), available at http://banking.senate.gov/01_06hrg/062801/schumer.htm.
88. Katzman, *The Iran-Libya Sanctions Act (ILSA),* CRS-2.
89. James Phillips, "Stay the Course on Sanctions against Iran and Libya," Heritage Foundation Executive Memorandum, 28 June 2001, http://www.heritage.org/research/middleeast/em756.cfm; Katzman, *The Iran-Lybia Sanctions Act (ILSA),* CRS-2.
90. Katzman, *The Iran-Lybia Sanctions Act (ILSA),* CRS-3.
91. Secretary Powell's statement of 17 August 2003 is archived at http://www.america.gov/st/washfile-english/2003/August/20030817133140uhp5.929202E-02.html.
92. Katzman, *The Iran-Libya Sanctions Act (ILSA),* CRS-6.
93. "U.S. Trade Sanctions Expanded for Parties Dealing with Iran," *Baker Botts Client Update,* 20 October 2006, http://www.bakerbotts.com/file_upload/IranFreedomSupportActSignedIntoLaw.htm.
94. Cuba policy, also covered in this edition, is also a continuing "tug-of-war" between the executive and legislative branches. In an interesting reversal of positions, Roger Noriega, who, as a staffer for Senator Jesse Helms, drafted the LIBERTAD Act (which in turn paved the way for ILSA), which was an attempt to codify Cuba sanctions policies by Congress, now argues against

congressional efforts to change Cuba policy, arguing that "discretion and diplomatic leverage" ought not to be taken out of the president's hands. Roger Noriega, "Colombia Si, Castro No," *Forbes,* 31 March 2010, http://www.forbes.com/2010/03/31/cuba-colombia-trade-opinions-contributors-roger-noriega.html?feed=rss_home.

95. Letter of 11 December 2009 archived at http://www.foreignpolicy.com/images/091211_200912110001.pdf.
96. The letter, dated 27 January 2010, is archived at http://www.foreignpolicy.com/images/100127_20100127_-_letter_to_POTUS_Re_Iran.pdf.
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98. Mira Oberman, "US Lawmaker Urges Iranian Gasoline Embargo," Agence France-Presse, 19 February 2010, available at http://www.google.com/hostednews/afp/article/ALeqM5hLUgYl5l7ro8ULfOySrGOlqwKSCA.
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To Close or Not to Close: U.S. Security Policy on Guantánamo

HAYAT ALVI*

> September 11, 2001, was a day of unprecedented shock and suffering in the history of the United States. The nation was unprepared. How did this happen, and how can we avoid such tragedy again?
>
> —*The 9/11 Commission Report* (Preface)

> I think sooner or later there will be a need to close Guantánamo and it will be up to the Government to decide and I hope they will do it as soon as possible.
>
> —Kofi Annan, former UN Secretary-General.[1]

INTRODUCTION

On September 11, 2001, terrorists hijacked four civilian airplanes and used them as missiles, crashing two into the World Trade Center in New York and one into the Pentagon, and the fourth, intended for the White House, was brought down in a field in Pennsylvania. In response, the United States led a campaign in Afghanistan in October, removing the Taliban regime from power and pursuing al Qaeda operatives. Some prisoners captured during the campaign were sent to the military base in Guantánamo Bay.

Ever since the George W. Bush administration decided to utilize the prison at Guantánamo Bay to hold detainees suspected of terrorism in January 2002, the U.S. government has come under tremendous international pressure from various state and nonstate actors to change the policy of indefinite detention without charge at Guantánamo.

Both international and domestic laws came into play in the issue of trying, releasing, or continuing the detention of these prisoners. The Bush administration's decision to label the prisoners as "enemy combatants," hence appearing to avert the application of the Geneva Conventions, led to heightened activism against these detentions.

In reality, the U.S. Southern Command (SOUTHCOM) staff judge advocate was mindful of the legal obligations to which the U.S. government would be held accountable. As the first group of prisoners headed toward the Guantánamo detention facility, the staff judge advocate phoned the International Committee of the Red Cross (ICRC) in Geneva and invited the nongovernmental organization (NGO) to come to Guantánamo.[2] According to Captain Robert Buehn, the former commanding officer at Guantánamo, "General Lehnert[3] thought that inviting the ICRC was a great idea. There was no objection."[4]

* I would like to acknowledge Captain Albert Shimkus, Captain Robert Buehn, and Commander Alberto Soto for their contributions and input in this case.

Although it was the ICRC that played a pivotal role in monitoring the treatment and health of the Guantánamo detainees, it was not alone. Numerous NGOs and intergovernmental organizations (IGOs) were directly and indirectly involved, especially in activism demanding the application of the rule of law and/or complete closure of the Guantánamo prison. Increasingly, the U.S. government came under pressure from domestic and international activists and actors to close Guantánamo outright. In January 2009, President Barack Obama signed an executive order to close Guantánamo prison by 22 January 2010. Not only was the Obama administration unable to meet the deadline but it also has faced tremendous opposition and obstacles to the policy. In many respects, the Obama administration has been compelled to maintain Bush administration policies, although President Obama continues to reiterate his determination to close Guantánamo.

In this case, the application of domestic criminal law, international laws, and treaties, conventions, and commissions to which the United States is a signatory have all played a critical role in this policy change. In addition, it has been the unrelenting activism of NGOs and IGOs, along with media attention pertaining to the allegations of abuses of detainees at Guantánamo, that effectively influenced U.S. policy making. This case highlights the measures that some NGOs and IGOs took to affect this policy change, and thus illustrates the importance of the role, and in some cases authority, of these actors in influencing the direction of U.S. policy making and process. The case also illustrates the similarities and differences in policies and perspectives between the Bush and Obama administrations, as well as the underlying problem and threat of terrorism and armed resistance groups (ARGs). Given the complexities of the ongoing war in Afghanistan, to which President Obama has remained committed, the need for the Guantánamo facility might outweigh the utility and reasoning of the policy shift.

9/11 AND THE BUSH ADMINISTRATION

The September 11 attacks had just taken place, and within 24 hours Deputy Secretary of State Richard Armitage called Pierre-Richard Prosper, the State Department's ambassador at large for war crimes issues. Armitage discussed the "likelihood of prisoners in U.S. custody as part of the response to the attacks of the day before."[5] Almost simultaneously, the White House convened an urgent meeting, led by White House counsel Alberto Gonzales, about possible prisoners.[6]

> On September 19, Gonzales called a meeting that included Prosper and appointed him head of an interagency group whose task was to consider and make recommendations on the legal parameters that would apply to prisoners the United States apprehended in retaliating against al Qaeda and the Taliban. For the next couple of months, Prosper's group, consisting of lawyers and staffers from across the executive branch, continued to meet to discuss the legal context in which prisoners might be detained and tried.[7]

Then, President Bush issued the "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism," the military order of 13 November 2001, which "established the framework that would govern the detention of prisoners in the war on

terror throughout the Bush presidency."[8] This presidential order empowered the Department of Defense, especially the secretary of defense (Rumsfeld), over other legal authorities, including the Department of Justice. It empowered the secretary of defense to oversee the detention of accused noncitizens, and to hold authority over military tribunals that would try the prisoners.[9] This order was "broad and ambiguous and recognized no legal or procedural checks on the president's proclaimed powers."[10] The Bush order did not consider that international law had changed since the World Wars, with new Geneva Conventions stipulations in the post-1949 era, as well as a new U.S. Uniform Code of Military Justice (UCMJ) that has been established.[11] In addition, major developments have taken place in human and civil rights laws.[12]

The impact of the September 11 attacks on American emotions, psyche, politics, and national security concerns was tremendous and profound. Anger and the fierce desire to retaliate, as supported by international law and unanimously by the international community, drove the U.S. response to the attacks. Moreover, the terrorists' indiscriminate killings of noncombatants, along with their total disregard for international law and human rights, added to the anger, and forced the issue of the status and treatment of prisoners into the forefront of U.S. government security policy. Graphic videos of terrorists beheading their hostages, including some Americans, did not help the case for civil treatment of detainees. But then, that is why these criminals are called "terrorists." Nonetheless, the emotions and anger in America paved the way for the Bush administration policies that sent war prisoners from Afghanistan to Guantánamo.

The process of the policy making heavily involved executive authority. Prosper and other national security officials were not informed about the new Bush order:

> Uninformed ahead of time about the Military Order, Prosper was astonished when the Order was publicly announced. Nor was he not [*sic*] the only high-ranking official to be blindsided by the Order's release. The general counsels for the secretary of state and the national security advisor were stunned, as were their bosses, Colin Powell [secretary of state] and Condoleezza Rice [national security advisor]. Even the Joint Chiefs were left out of the loop—a notable absence when it came to a so-called Military Order.
>
> The exclusion of principal players from a discussion that was unprecedented in its aggrandizement of presidential powers was the first hint that there was another team at work within the executive, one that was willing to cast aside the previously accepted interagency process. The issuance of the Military Order sent a signal—exclusionary, secretive meetings that resulted in national policy could and would take place under this president.[13]

Prosper and other interagency officials then had to promptly investigate possible locations under U.S. sovereignty to house detainees captured from the campaign in Afghanistan. Numerous options were listed, including U.S. bases in Germany, the Pacific, parts of Eastern Europe, and even Manhattan, New York; South Carolina; or Fort Leavenworth,

Kansas. It was decided that al Qaeda prisoners would not be held in the United States. In the midst of the discussion, a Department of Justice representative said, "What about Guantánamo?"[14]

> Prosper and his group, determined to be team players in this time of crisis, dutifully took diplomacy off the table in the name of expediency once the ready availability of Guantanamo Bay Naval Base became apparent. That the choice of a military base would empower the anti–international law bent of the administration and that it would ensure Secretary Rumsfeld's complete control over Guantanamo did not deter the interagency group from the goal of supporting the war effort in every way it could—in this instance, by recommending the choice of Guantanamo, a military base exempted from any civilian or extra-governmental protocols. There was no way to step off the base into civilian territory, no need to consider the opinions of a foreign government.[15]

A small group of lawyers, which came to be known as the "War Council," diligently worked on Secretary Rumsfeld's command to find a place where, essentially, law does not apply. The War Council had five lawyers from the executive branch, and it was headed by David Addington, Vice President Dick Cheney's legal counsel, and Alberto Gonzales, White House counsel at the time.[16] The War Council also included Gonzales's deputy Tim Flanigan; William "Jim" Haynes II, general counsel for the Defense Department; and John Yoo, a lawyer from the Office of Legal Counsel.[17] During the following weeks, "the legal parameters of Guantanamo's status would be fleshed out in discussions among the lawyers, but for now, the preference for Guantanamo had started to push other prospective sites aside."[18] Of course, by 2002 Guantánamo was receiving the first prisoners from the Afghanistan campaign.

The Bush White House declared that these detainees would not be considered prisoners of war (POWs). In February 2002, White House spokesman Ari Fleischer explained that

> the Guantanamo detainees are not entitled to POW privileges under Article 4 of the Geneva Conventions. . . . [A]l-Qaeda and Taliban are "unprivileged" or "unlawful" combatants because they don't pass the four traditional tests for so-called state parties to war, as defined in the conventions. By this definition, soldiers must:
>
> - wear uniforms or distinctive insignia;
> - have a recognizable chain of command;
> - carry arms openly; and
> - conduct military operations in accordance with the laws and customs of war.[19]

In March 2004, a group of legal experts filed an amicus brief in support of the military tribunal process. The brief proclaims that

> critics of the process are ignoring "the settled rules of the law of armed conflict . . . which permits nations to defend their citizens through the use of military force, including the capture and detention of enemy combatants throughout the conflict . . . so long as an

> armed conflict is still in progress." Ruth Wedgwood, a professor of international law at the Johns Hopkins University and one of the filers, says the brief argues that al-Qaeda, a terrorist group, "cannot be considered a state party to the Geneva Convention;" therefore, the Qaeda fighters being held at Guantanamo are not entitled to POW status or habeas corpus[*] rights.[20]

Subsequently, reports alleging abuse and mistreatment of prisoners, and the supposed suicide of three prisoners in 2006, together with the Abu Ghraib prison scandal in Iraq (2004), brought the detention policy in Guantánamo under greater scrutiny and criticism. Specifically in response to the three suicides, external and domestic condemnation intensified:

> Officials in Germany, Sweden, and Britain renewed calls for the United States to close the prison and give the prisoners trials. A Saudi Arabian human rights agency called for an outside investigation of the deaths, questioning whether the men had been tortured.
>
> And in the United States . . . [Senator] Arlen Specter, chairman of the Senate Judiciary Committee, called the indefinite detention of terrorism suspects for years without trial a "grave problem."
>
> Specter, a Pennsylvania Republican, said on CNN that the United States should put prisoners at Guantanamo on trial. He also said that the military has brought many detainees to Guantanamo on evidence that may be too weak to produce a conviction.
>
> "Where we have evidence, they ought to be tried. . . . As to a great many others, there is not evidence which could be brought into a court of law," Specter said.
>
> Also speaking on CNN, Senator Jack Reed, a Rhode Island Democrat who sits on the Armed Services Committee, said the administration should try to close the prison "as quickly as possible." Reed said the administration needed to put in place fair procedures to determine "who in fact is a terrorist" and who is not, something, he asserted, that has not been done.
>
> "We should recognize that as long as Guantanamo exists, it's a source of international attention and concern," Reed said. "These types of incidents—these suicides—will only provoke further condemnation around the world."[21]

Senators Carl Levin and Lindsey Graham drafted legislation allowing Guantánamo prisoners access to U.S. courts of appeal, but it was rushed through Congress and did not provide enough support for changing the process in a significant manner.[22]

However, both Secretary Rumsfeld and Attorney General Alberto Gonzales defended the Guantánamo detention policy. Secretary Rumsfeld denied any allegations of abuses of

* Writ of habeas corpus: "A writ of habeas corpus is a judicial mandate to a prison official ordering that an inmate be brought to the court so it can be determined whether or not that person is imprisoned lawfully and whether or not he should be released from custody. . . . The writ of habeas corpus serves as an important check on the manner in which state courts pay respect to federal constitutional rights." See "Habeas Corpus," 'Lectric Law Library, http://www.lectlaw.com/def/h001.htm.

prisoners, and he emphasized the constant presence of the International Committee of the Red Cross continued at Guantánamo. He also harshly criticized the media, calling them "hostile to the values of liberal democracies and the aims of America's 'war on terrorism.'"[23] He added, "[S]ome of the most critical battles may not be in the mountains of Afghanistan or the streets of Iraq, but in newsrooms—in places like New York, London, Cairo, and elsewhere."[24] In response, Alex Jones, director of the Shorenstein Center for Press and Public Policy at Harvard University, said, "Rumsfeld has some valid points, but also might be confusing propaganda with news. The news is not good out of Iraq, therefore the coverage reflects that."[25] About Guantánamo, Rumsfeld claimed that the inmate abuses "are largely fabricated," and that "any single example of abuse that has ever been cited has been investigated."[26]

Attorney General Gonzales emphasized that "each detainee is entitled to a hearing to present evidence that he believes might support his release," which constitutes a chance given to inmates once a year to be heard and released.[27] At the same time, Gonzales cautioned that releasing detainees could pose dangers to U.S. interests and Americans. He pointed out that "the Defense Department has reported that at least ten have returned to take up arms against the United States." He said, "It is a further reminder that if we do not constantly engage the terrorists, I am convinced the terrorists will once again successfully bring the battle to our shores."[28]

The number of released former Guantánamo detainees who have allegedly rejoined terrorist groups and engaged in attacks against the United States, or have been suspected of doing so, has been steadily rising. In early 2009, the Pentagon reported that about 14 percent of released former Guantánamo detainees had returned to terrorist activities.[29] According to the 2009 Pentagon report, out of 530 released detainees, 27 are confirmed terrorists, and 47 are suspected of involvement in terrorist activities.[30] As of January 2010, the percentage has risen from 14 to 20 percent. According to the Defense Intelligence Agency (DIA), "One in five former detainees returned or are suspected to have returned to terrorist activity after leaving the U.S. prison facility."[31]

In 2008, candidates running for the November U.S. presidential election presented their positions about Guantánamo. Democratic candidate Barack Obama strongly opposed keeping the prison in Guantánamo open, and during his campaign he promised to see to its closure. "During his election campaign, Mr. Obama described Guantanamo and the CIA's secret prisons around the world as a 'sad chapter in American history.'"[32] He said his administration would consider trying the suspects in existing U.S. civilian and military court-martial systems before initiating a new court system, and his legal team acknowledged that this would not be without controversy and opposition, especially from Republicans.[33] But he has maintained his position that Guantánamo goes against the human and civil rights principles embodied in American democracy.

Another candidate, Republican Senator John McCain, also favored shutting down Guantánamo. McCain, himself a prisoner of war in Vietnam who suffered from torture at the hands of his captors, thought that the Guantánamo prisoners "should be moved to Fort Leavenworth, Kansas."[34] In a speech he gave in March 2008, McCain said the United States

should "close Guantánamo and work with our allies to forge a new international understanding on the disposition of dangerous detainees under our control."[35] McCain sponsored the Detainee Treatment Act of 2005, encompassing antitorture legislation, and he was a primary sponsor for the Military Commissions Act (MCA) of 2006. The MCA, which President George W. Bush signed, stipulates the provisions for trying alien enemy combatants within the framework of military commissions. At the same time, McCain criticized the 2008 Supreme Court ruling that allowed Guantánamo prisoners "to challenge their detention in civilian courts."[36]

In June 2006, President Bush himself said, "I'd like to close Guantánamo, but I also recognize that we're holding some people that are darn dangerous, and that we better have a plan to deal with them in our courts."[37] Again, in August 2007 he said, "[I]t should be a goal of the nation to shut down Guantánamo."[38] As an October 2008 *New York Times* article describes it, Mr. Bush's aides

> insist that the President's desire is still to close Guantánamo when conditions permit, and the White House has not announced any decision. But administration officials say that even Secretary of Defense Robert M. Gates and Secretary of State Condoleezza Rice, the most powerful advocates for closing the prison, have quietly acquiesced to the arguments of more hawkish advisers, including Vice President Dick Cheney.[39]

NO LETUP FROM NGOS AND IGOS

Throughout the Bush presidency, a number of NGOs and IGOs exerted tremendous pressure on the U.S. government to close Guantánamo. A descriptive list of some of the principal NGOs and IGOs that affected U.S. policy, and the role that they played, follows:

Nongovernmental Organizations

American Civil Liberties Union (ACLU)

On its website, the ACLU describes itself as follows:

> The ACLU is our nation's guardian of liberty, working daily in courts, legislatures and communities to defend and preserve the individual rights and liberties that the Constitution and laws of the United States guarantee everyone in this country.
>
> These rights include:
>
> - Your First Amendment rights—freedom of speech, association and assembly; freedom of the press, and freedom of religion.
> - Your right to equal protection under the law—protection against unlawful discrimination.
> - Your right to due process—fair treatment by the government whenever the loss of your liberty or property is at stake.
> - Your right to privacy—freedom from unwarranted government intrusion into your personal and private affairs.

> The ACLU also works to extend rights to segments of our population that have traditionally been denied their rights, including people of color; women; lesbians, gay men, bisexuals and transgender people; *prisoners*; and people with disabilities.[40]

The ACLU has been present at every military commission hearing regarding Guantánamo prisoners, and the organization established the "John Adams Project," coordinating with the National Association of Criminal Defense Lawyers "to sponsor expert civilian counsel to assist the under-resourced military defense counsel of some Guantánamo detainees."[41] The ACLU has been consistently calling on the U.S. government to close the Guantánamo Bay prison.

In addition, the ACLU is calling on the Obama administration to restore due process in transferring Guantánamo prisoners to prisons on U.S. soil, in the process of closing Guantánamo. ACLU director Jameel Jaffer issued the following statement on 2 August 2009:

> Closing Guantánamo will be an empty gesture if we just reopen it on shore under a different name. While it's encouraging that the administration is attempting to meet the deadline for closing Guantánamo, any arrangement that allows indefinite detention without charge or trial will leave in place the problems that led President Obama to order the prison closed in the first place.[42]

Amnesty International (AI)

The NGO Amnesty International has closely monitored developments regarding Guantánamo prisoners, and has conducted urgent action calling on the U.S. government to respect human rights and the rule of law. On the Amnesty USA website, the following statement about "Guantanamo, Bagram and Illegal U.S. Detentions" is posted:

> The United States detention facilities at Guantanamo Bay, Cuba, have become emblematic of the gross human rights abuses perpetrated by the U.S. government in the name of fighting terrorism. At Guantanamo, the U.S. government sought to hold detainees in a place neither U.S. nor international law applied. But no one can be held outside of the law. Detainees held at Guantanamo must either be promptly charged and given fair trials in U.S. federal courts, or be released, to countries where they will not be at risk of human rights violations.[43]

On 12 January 2009, AI sent a joint letter (along with the ACLU, Coalition to Stop the Use of Child Soldiers, Human Rights First, and Human Rights Watch) to then–president-elect Barack Obama, urging him to suspend the military commissions trying Guantánamo prisoners upon taking office.[44] In particular, the coalition of NGOs writing this letter appealed for juvenile justice regarding prisoner Omar Khadr, a Canadian national, who was a juvenile at the time of being detained. The last line of this letter says, "We hope that you will act quickly on this matter in the interest of justice, protection of human rights, and the rule of law."[45]

Then on 22 January 2009, AI sent an "open letter to the European Union (EU) Foreign Ministers regarding the closure of Guantánamo." The coauthors of the letter include the Center for Constitutional Rights, Human Rights Watch (HRW), Reprieve,[46] and FIDH.[47] The open letter to the EU states the group's intentions to advocate for the closure of the Guantánamo detention facility. The group of NGOs also calls on the EU to help the United States in achieving the goal of closing the prison, and requests that the EU member states "provide humanitarian protection to Guantánamo detainees who could be at risk of torture or persecution in their home countries, or who are stateless."[48]

Center for Constitutional Rights (CCR)

In 1966, a group of attorneys participating in the civil rights movement in the American South created the Center for Constitutional Rights. The CCR describes itself as a "non-profit legal and educational organization committed to the creative use of law as a positive force for social change."[49]

In a July 2009 press release the CCR supported the establishment of a new NGO consisting of former Guantánamo prisoners and their allies, the **Guantánamo Justice Center** (GJC) in Geneva.[50] In a special CCR brochure entitled *Guantánamo and Illegal Detentions,* the CCR describes its involvement in the "legal battle over Guantánamo" as follows:

> In November 2001, President Bush issued "Military Order Number One," which claimed that he could capture, arrest or kidnap and then hold forever, without trial and without the right to challenge their detention in court, any non-citizen that he declared was a "terrorist." On January 11, 2002, the first prisoners were brought from Afghanistan to Guantánamo Bay Naval Station in Cuba. One month after these first 20 men arrived, the Center for Constitutional Rights filed the first case on behalf of detainees at Guantánamo, seeking a *habeas corpus* hearing in which the legitimacy of their detention would be reviewed by the federal courts.[51]

CCR has provided more than 500 pro bono attorneys to represent Guantánamo prisoners, plus the organization continues to represent former detainees "seeking justice for their abuse and wrongful detention."[52] CCR is also active in helping resettle about 60 men still remaining at Guantánamo, who cannot return home due to fears of torture and persecution in their countries of origin.[53]

Human Rights Watch (HRW)

The NGO Human Rights Watch has been persistently following developments regarding prisoners at Guantánamo, and for years it has been urging the U.S. government to close the facility. In June 2007, HRW sent a letter to President Bush, calling on him to close the detention center immediately. In this letter, HRW claims that the prisoners' continued detention without charge "has undermined U.S. efforts to end terrorism."[54] Furthermore, HRW contends that U.S. federal courts are more capable of trying terrorists than military commissions.[55]

International Committee of the Red Cross (ICRC)

In wartime, the military is required to inform the ICRC upon detaining captives. The ICRC ensures the application of the Geneva Conventions, and each Convention prescribes the actions of the ICRC. The military is required to show transparency and "to have present an authority that could attest to [its] compliance with the law."[56]

At Guantánamo, the ICRC also served as a resourceful tool for discerning the identities, statuses, backgrounds, and memberships in an army or other combat category of the prisoners. According to Karen Greenberg, "SOUTHCOM was not prepared to handle visitors from the Muslim world. . . . Ignorance of Afghanistan was neither a sign of incompetence nor negligence on the part of SOUTHCOM. This was not their territory—they knew about drug trafficking and military coups and refugee matters. As a result, they were starting out with a severe handicap."[57]

The ICRC, a global organization, has intimate knowledge about the demographics, languages, and cultures of the prisoner population arriving at Guantánamo. Hence, the ICRC has been "of immense value at Guantánamo, not just to help the military avoid violating international law as they had been trained to do, but also for advising on Muslim culture."[58] Another utility of the ICRC's presence at Guantánamo was to preempt countless human rights groups' requests to come to the detention facility. With the ICRC present, there would be a pretext for denying an influx of other organizations coming to Guantánamo, which would have complicated an already highly complex situation. Furthermore, with the ICRC "confidentiality was ensured. The ICRC would make its recommendations to Washington, not to the press or the public. Amnesty International and Human Rights Watch, by contrast, served the public and would announce any infractions they detected with great fanfare to the press."[59]

In addition to enhancing understanding among the Guantánamo military authorities, security guards, and the prisoners, the ICRC also substantially helped in the facility's medical program led by Captain Albert Shimkus, USN, commanding officer of the naval hospital. The ICRC provided guidance to the medical program about "consent, prohibitions on nudity, and about the use of females to deliver care."[60] The ICRC also provided diagnostic help, particularly regarding diseases with which the Guantánamo medical personnel were not familiar.[61] In general, the presence of the ICRC at Guantánamo contributed tremendously to the professionalism in treating the prisoners.[62] The image of the United States had already suffered a tremendous decline in the international arena. Had the ICRC not been present at Guantánamo, especially during the early stages of the arrival of prisoners, arguably the image and reputation of the United States would have worsened even further.

The ICRC explains the aims of its visits to detention facilities. First and foremost, the ICRC has a mandate under the 1949 Geneva Conventions and their protocols to "regularly assess the conditions of detention and the treatment of detainees in conflict situations around the world."[63] The process of ICRC visits involves

> [a] team of specialized delegates, accompanied by interpreters and medical personnel when appropriate. The organization follows the same standard working procedures wherever it visits detainees. These include the following points:
>
> - ICRC delegates must be able to speak in total privacy with each and every detainee of their choice.
> - ICRC delegates must have access to all cells where detainees are held and also to other facilities such as kitchens, showers, infirmaries and punishment cells.
> - The ICRC must be allowed to repeat its visits as frequently as it chooses.
> - The ICRC registers detainees falling within its area of concern individually, so as to be able to monitor the situation of each personal as long as he remains in captivity.
>
> In confidential discussions with the authorities before and after each visit, delegates raise concerns and make recommendations where appropriate.[64]

On 14 February 2007, the ICRC's Regional Delegation for United States and Canada issued a detailed confidential report pertaining to the treatment of 14 "high value detainees" in CIA custody. The report, containing a cover letter addressed to John Rizzo, acting general counsel of the CIA, highlights the ICRC's "grave concerns" about ill-treatment of detainees, and underscores the legal implications of holding detainees in undisclosed detention. The report acknowledges that the ICRC was permitted to meet with each of these high-value prisoners in private from 6 to 11 October 2006, and commended the Bush administration for confirming the whereabouts of the 14 prisoners.

In the introduction, the ICRC explains the purpose of the report: "[T]o provide a description of the treatment and material conditions of detention of the fourteen during the period they were held in the CIA detention program, as reported to the ICRC during its private interviews with these persons."[65]

The report contains the following segments: "Main Elements of the CIA Detention Program"; "Arrest and Transfer" and here the name, nationality, and place and date of arrest of each of the 14 detainees are given; "Continuous Solitary Confinement and Incommunicado Detention"; "Other Methods of Ill-Treatment"; "Suffocation by Water"; "Prolonged Stress Standing"; "Beating by Use of a Collar"; "Beating and Kicking"; "Confinement in a Box"; "Prolonged Nudity"; "Sleep Deprivation and Use of Loud Music"; "Exposure to Cold Temperature/Cold Water"; "Prolonged Use of Handcuffs and Shackles"; "Threats"; "Forced Shaving"; "Deprivation/Restricted Provision of Solid Food"; "Further Elements of the Detention Regime"; "Conditions of Detention in Later Stages"; "Health Provision and the Role of Medical Staff"; "Legal Aspects in Relation to Undisclosed Detention"; "Fate of Other Persons Who Passed through the CIA Detention Program"; "Future Use of the CIA Detention Program"; and "Conclusion."[66]

The report also provides Annex 1 containing excerpts of some of the interviews conducted with the 14 detainees. This is followed by Annex 2, which is a list of "ICRC written interventions to the US authorities requesting information on the fourteen," complete with

names of prisoners and dates of requests. The last paragraph in the conclusion of the report states that

> [t]he ICRC trusts that the information in the present report will provide a useful tool for the relevant US authorities to take the necessary measures to ensure that all persons deprived of liberty in the context of the fight against terrorism are treated in accordance with the provisions of international law and internationally recognized standards. The ICRC looks forward to continue its dialogue with the US authorities on this issue.[67]

In a March 2009 "Operational Update" posted on its website, the ICRC announced its position, based on its visits to these facilities, on the U.S. detention programs in Guantánamo Bay, Cuba; Bagram, Afghanistan; and Charleston, South Carolina. Under the heading "Recent Developments," the ICRC mentions the 12 June 2008 U.S. Supreme Court decision (*Boumedine v. Bush and Al Odah v. United States*) to uphold habeas corpus for Guantánamo detainees. The ICRC "is monitoring the impact of legal developments in connection with the habeas corpus ruling and will communicate any observations or concerns directly to the US authorities if needed."[68]

Intergovernmental Organizations

European Union (EU)

The Council of the European Union *Annual Report on Human Rights* (16 October 2002), under the subheadings "EU-US Dialogue" and "European Parliamentary Annual Report on Human Rights," states:

> Whilst the US and the EU have a great deal in common in their approach to human rights, differences on certain issues inevitably arise in any relationship. This dialogue has also offered the European Union an opportunity to raise with the United States issues relating to the death penalty, as well as the status of detainees held in the Guantanamo Bay "Camp X-Ray" base. . . .
>
> The Parliament's report stresses that the fight against terrorism must not imperil respect for human rights and calls upon governments not to use that fight as a pretext for human rights abuses at home. This stance is in line with the position adopted by the EU, which has consistently underlined that the fight against terrorism must take place in full respect for human rights and fundamental freedoms (a point reiterated by the EU at recent sessions of the UN Commission on Human Rights). The report specifically calls for the recognition as prisoners of war of those held by the United States in Guantanamo and calls upon . . . the United States to ensure respect for the human rights of all persons in custody. Similar concerns have been raised by the EU in the framework of the EU-US dialogue.[69]

An EU press release dated 12 December 2006 mentions a meeting between Javier Solana, EU high representative for the common foreign and security policy (CFSP), and the executive director of Human Rights Watch, Kenneth Roth. The meeting "provided an opportunity to discuss a range of human rights issues, including the situation in Sudan (Darfur), China, Russia and the detainees at Guantanamo."[70]

The EU has commended the United States for its decision to close the Guantánamo Bay detention facility. A joint statement of the EU and the United States on the closure of Guantánamo was issued on 15 June 2009, in which the parties' commitment to security and counterterrorism efforts are affirmed. In addition, the EU emphasizes the following points in the statement:

> We reaffirm that the primary responsibility for closing Guantánamo and finding residence for the former detainees rests with the United States. However, we also recall the request made by the Government of the United States to assist it in finding residence for some of those persons cleared for release from the Guantánamo Bay detention facility.
>
> . . . We take note of the commitment of the United States to develop a new and more sustainable approach to security-related issues and of the thorough review of US policies initiated by President Obama's Executive Orders of January 22, 2009. Against this background and in the expectation that underlying policy issues will be addressed, the EU and its Member States wish to help the US turn the page. In this context, certain Member States of the European Union have expressed their readiness to assist with the reception of certain former Guantánamo detainees, on a case-by-case basis.
>
> . . . We note that the United States will consider contributing to the costs incurred by EU Member States in relation to receiving ex-detainees on a case-by-case basis.
>
> Other issues related to the reception of ex-detainees will be addressed bilaterally between the US and the Member States concerned.[71]

Organization of American States (OAS)

In April 2008, New Mexico governor Bill Richardson addressed the Organization of American States, and his speech is posted on the OAS website. In his speech, he says: "Guantanamo remains not just an offense to America's beliefs, but a shameful symbol to its Latin American neighbors. Guantanamo should be closed on day one. The United States should stand again for accountability and rule of law, by restoring habeas corpus and joining the International Criminal Court."[72]

In early 2009, the Inter-American Commission, a branch of the OAS, listened to CCR president Michael Ratner and the ACLU's human rights program director, Jamil Dakwar, present arguments about the need for the Obama administration to change Bush-era policies regarding "torture and war crimes," specifically the Military Commissions Act of 2006. Mr. Ratner alleged that the act

> provides immunity for Bush administration officials who authorized torture of military combatants, violated the Geneva Conventions or otherwise broke the law on the advice of government lawyers. [Mr. Ratner] also cited the positions that the Bush and Obama Justice Departments have taken in seeking to dismiss cases on the grounds that they would expose "state secrets" or otherwise interfere with executive powers.[73]

Both men argued that a "truth commission," such as proposed by Senator Patrick Leahy (D-VT), would never suffice as a substitute for criminal prosecutions, which they argued are "critical to holding the United States accountable for violations of international law."[74] In his response, the U.S. representative to the Inter-American Commission, Lewis Amselem, cited the measures that the Obama administration is taking to ensure its obligations to meet Geneva Conventions protocols, and to repatriate detainees. Mr. Ratner pointed out that no Americans have yet been prosecuted for torture in military or civilian courts.[75]

The Inter-American Commission's rulings are not binding, but it does have the authority to make recommendations to the U.S. government.[76]

The United Nations (UN)

In May 2006, a UN investigative panel authorized to monitor compliance with the **UN Convention against Torture (CAT)** issued a scathing report against the Bush administration's policies of detention and interrogation of Guantánamo detainees. The panel's report "urged the United States to shut down its Guantanamo Bay detention camp, close any secret overseas CIA prisons, and halt the use of what [the panel] said are cruel and degrading interrogation techniques."[77]

Moreover, the panel maintained that the Bush administration's "Global War on Terror" (GWOT) policies "were at odds with the commitments the United States made when it ratified the global Convention Against Torture treaty in 1994."[78]

During the Clinton administration, Congress passed legislation that further integrated the treaty's terms and provisions into U.S. domestic law. However, following the 9/11 attacks in 2001, "President Bush's legal team told him that he had the power to bypass domestic and international restrictions on the treatment of prisoners, such as the antitorture treaty or the Geneva Conventions."[79]

The Bush White House press secretary, Tony Snow, rejected the report's findings, and invoked U.S. law pertaining to the treatment of the prisoners. Snow also referred to President Bush's statements earlier in the month that "he would like to shut down Guantanamo eventually, but was not yet able to do so because the country remains at war with terrorists."[80]

In February 2006, a panel representing the UN Commission on Human Rights called on the United States to close the Guantánamo Bay detention facility, and expressed its "utmost concern over attempts by the U.S. to redefine torture in the framework of the struggle against terrorism."[81] The panel's findings were based on a six-month study reviewing information from interviews of former Guantánamo detainees, the U.S. government, and lawyers representing some of the detainees. In addition, the panel accessed declassified U.S. government public documents.[82]

However, the UN Commission on Human Rights was discredited because member countries included some of the worst violators of human rights, including Sudan, Zimbabwe, and China.[83] A month after the commission presented its findings and recommendations, the

UN General Assembly decided to terminate the commission.[84] In contrast, the UN Committee against Torture, consisting of a 10-member panel of human rights investigators, is more respected and credible.[85]

THE OBAMA ADMINISTRATION

During the presidential campaign, then-senator Barack Obama pledged to close Guantánamo prison and decide each detainee's case individually in either courts-martial or U.S. criminal courts.[86] The Obama campaign maintained that President Obama would do away with military commissions completely, and "use U.S. laws and courts that were already on the books before the September 11, 2001, attacks to try terrorism suspects captured overseas."[87] On the Obama campaign website, under "Guantánamo," the candidate stated his plan to transfer dangerous detainees "to a secure military facility in the United States and [bring them] to trial and swift justice."[88] Meanwhile, Secretary of Defense Robert Gates informed Congress that, "in some cases, the administration was 'stuck' with keeping captives at Guantánamo whom it would like to send away."[89]

Once elected, President Obama immediately signed an executive order to close the Guantánamo prison by 22 January 2010. The deadline was not met, and the actual implementation process of closing it has become increasingly complicated. While many critics accuse the Obama administration of failing to make a clean break from Bush-era policies regarding indefinite detention of prisoners, there are some areas in which the administration has departed from the latter.

The transfer of some detainees to U.S. prisons and their trial in U.S. criminal courts are some of the measures that the Obama administration is taking. In other cases, some detainees have been repatriated to countries that have agreed to take them, upon intense negotiations. However, it is important to take note of the following:

> Although the president missed his self-imposed one-year deadline to close Guantanamo, his administration has made significant progress in reducing that prison's population by transferring close to sixty detainees to other countries for prosecution or release. The Bush administration had previously transferred more than five hundred detainees out of Guantanamo (for which it received little credit in the international community), but almost all of these transfers were to the detainees' countries of origin. Through unflagging diplomatic efforts, Special Envoy Daniel Fried has been able to capitalize on the popularity of the Obama administration to cajole more than a dozen countries (including ten previously reluctant European allies) to resettle thirty-one detainees not from those countries and has repatriated more than twenty-five others.[90]

Congress has reacted with alarm to the idea of transferring detainees to U.S. soil.[91] In November 2009, Attorney General Eric Holder announced that 9/11 planner Khalid Sheikh Mohammed and four other conspirators would be tried in a Manhattan federal court. The domestic backlash to this decision was astounding. The Obama administration failed to foresee "the fierce domestic political opposition . . . and therefore did not shore up the necessary political support in Congress and in New York. That large majorities of the

Democratic-controlled Congress voted within months to prohibit the use of appropriated funds to close Guantanamo demonstrates just how badly the White House misjudged the domestic political attitude toward Guantanamo."[92]

By December 2009, President Obama authorized the government to acquire an Illinois prison, the Thomson Correctional Center, for the purpose of housing about half of the 210 Guantánamo inmates.[93] The details of the plan, described in a letter from the president to Illinois governor Pat Quinn, stipulate that the prison would be a dual-use facility, "housing federal inmates under the auspices of the Department of Justice, and select Guantánamo detainees monitored by the Department of Defense. Administration officials say as many as one hundred prisoners could be bound for Illinois, the majority ineligible for transfer, trial, or release."[94] This plan stirred heated criticism, particularly from congressional Republicans claiming that this will pose a major security risk.[95]

In February 2010, Secretary of State Hillary Clinton reiterated support for the plan to close Guantánamo. She said,

> [W]e had hoped that this task would be completed within a year. That has proven impossible. But we will close Guantanamo. And we will close it in a way that is both responsible and consistent with basic standards of justice. Our progress has been slow because this is difficult. It depends in part on the willingness of other nations to take in detainees, and we are very grateful to those nations that have already done so, and we ask others to please [consider] doing so, in order to help us expedite the closing of Guantanamo.[96]

However, there seems to be no consensus on the issue, even among Democrats. Senator Ben Nelson (D-NE) expressed unequivocally that he does not support closing Guantánamo since he visited the facility. In a March 2010 interview, responding to the question, "Do you support closing Guantánamo Bay?" he said: "Not at this point . . . I don't support closing Guantánamo Bay."[97] Furthermore, he added:

> [t]he president said it should be closed . . . John McCain said it should be closed. President Bush before he left said it should be closed. Secretary Gates said it should be closed. And former secretary Colin Powell, I believe, has also said it should be closed.
>
> And whether it's closed or not, we have to have a plan in place that outlines how we deal with . . . the people who are incarcerated there, the combatants. . . . We have to find a way to do that.[98]

Secretary of Defense Robert Gates, also serving under Obama, maintains that the administration has no choice but to close Guantánamo, calling it "probably one of the finest prisons in the world today," but, at the same time, "he said it had become 'a taint' on the reputation of America."[99] Secretary Gates added that "once the decision was made to close Guantanamo, 'the question is, where do you put them?'"[100] He emphasized that President Obama would never endanger the public, and said that "there has never been an escape from a 'super-max' prison in this country."[101]

The chairman of the Joint Chiefs of Staff (CJCS), Admiral Mike Mullen, also supports Guantánamo's closure. In a May 2009 interview with ABC's program *This Week with George Stephanopoulos,* Admiral Mullen said, "Well, I've [been] advocating for a long time now that it [Guantánamo] needs to be closed."[102] He added, "It focuses on very difficult issues of what you do with the detainees who are there. There are some really bad people there. And so figuring out how we're going to keep them where they need to be, keep them off the battlefield, as well as close Gitmo itself is a real challenge."[103] In addition, Admiral Mullen emphasized that Guantánamo is used as a recruiting symbol for extremists who are fighting against the United States. He said, "[T]hat's the heart of the concern for Guantanamo's continued existence, in which I spoke to a few years ago, the need to close it."[104]

National Security Advisor James Jones defended President Obama's decision to close Guantánamo, asserting that "Guantánamo has served as a recruitment tool for insurgents, and as a result has probably created more terrorists than it detained."[105] Vice President Joe Biden also supports closing Guantánamo for similar reasons, mainly that "it has become the greatest propaganda tool that exists for recruiting of terrorists around the world."[106] He suggests moving the prisoners to Fort Leavenworth's maximum-security prison. He also cosponsored legislation "that would release all Guantánamo prisoners who have not been charged. This would mean releasing nearly all the prisoners."[107] This legislation, which Senator Tom Harkin (D-IA) introduced in the Senate, entitled "Guantanamo Bay Detention Facility Closure Act of 2007,"[108] was referred to the Committee on Armed Services but never passed into law. In addition to Biden, the other cosponsors of the bill were Robert Byrd (D-WV), Christopher Dodd (D-CT), Edward Kennedy (D-MA), Claire McCaskill (D-MO), and Sheldon Whitehouse (D-RI).[109]

The Obama administration continues to hold its position on closing Guantánamo notwithstanding the various legal, political, logistical, and security challenges that this poses. Whether or not this plan will be implemented successfully remains to be seen.

CONCLUSION

There are numerous reasons behind the decision to close the Guantánamo detention facility. Some of these reasons include

- Pressures from legal bodies and state and nonstate actors to close the facility;
- The need to affirm that the United States does not torture;
- Application of the rule of law and humanitarian law (Geneva Conventions);
- The need to deny terrorists the propaganda tools for recruitment, as well as symbols for fueling anti-American sentiments;
- Detachment and damage control—the effort to improve the image and credibility of the United States in the international arena—and the need for the Obama administration to distance itself, in policy terms, from the previous Bush administration.

The repatriation of the Guantánamo detainees is not without problems and complexities. Clearly, the implementation of the policy of closing Guantánamo is far more difficult than the actual executive order to change the Bush-era policy. Overall, the prominent role of NGOs and IGOs in exerting pressure on the U.S. government to close the facility is unquestionable.

Nearly a year and a half into his term in office, President Obama is facing formidable obstacles to implement plans for closing Guantánamo. The ongoing war in Afghanistan, numerous security threats, continual attempts by terrorists to attack the United States and its interests (e.g., the so-called underwear bomber incident in December 2009), and legal challenges for trying the Guantánamo detainees in the United States have compelled the Obama administration to continue some Bush administration counterterrorism policies. Some political analysts even argue that the Obama administration policies resemble "more continuity than change" in light of the previous administration. Consider that

> Mr. Obama has emphasized that the U.S. is still in a global "war" with Al Qaeda, and he has continued to use military force to kill (by drone strikes or other means) or detain members of Al Qaeda and the Taliban. And the administration continues to assert the right to hold members of Al Qaeda and the Taliban indefinitely, without trial, pursuant to the laws of war, rather than as criminal suspects.
>
> The Justice Department recently decided that 50 Guantánamo detainees will be detained indefinitely without trial. Attorney General Eric Holder announced in December that the Justice Department would prosecute Khalid Shaikh Mohammed and other 9/11 planners in court in New York, but the administration has recently conceded that it will have to move the trials to a more secure location, perhaps on a military base. And Mr. Obama announced his intent to prosecute other terror suspects through military commissions, which have been criticized by human rights groups and many European governments.
>
> The Obama administration also quietly announced last summer that it would continue the practice of rendition to snatch and transfer terrorism suspects to America, or even from one country to another, outside of judicial frameworks, provided the detainees do not face the risk of torture.
>
> Mr. Obama's unexpected continuation of these controversial policies poses a dilemma for European governments. Will they choose to ignore these policies because they like Mr. Obama? Or, after a sufficient honeymoon, will they begin to be as critical of the Obama administration as they were of the Bush administration?[110]

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Afterword

Upon coming to office, a newly elected president inherits decades of legacies preceding him, as well as the imprints of his immediate predecessor. In the Bush-Obama transition, there are no striking exceptions. As the cases presented in this book illustrate, separating oneself from the policies of previous leadership is not an easy task. I mention decades of legacies because even some Cold War policies still continue to affect present-day approaches to foreign policies and national security decision making. Consider the cases of Cuba, Russia, and landmines, all of which continue to embody, or be affected by, some aspects of Cold War–era elements. We have also learned that, despite presidential campaign promises, the realities on the ground that a new president encounters may compel him to embrace the status quo ante.

The balancing act of maintaining continuity in some policies while exacting change in others is immensely challenging, not to mention thankless. The president faces harsh criticism and excruciating scrutiny on all sides, and he must answer to the public, the media, Congress, political parties, interest groups, NGOs, IGOs, various industries, the armed forces, and at times even other states. The responsibilities of the president are particularly difficult when it comes to national security. The cases presented in this book highlight this in different contexts: during times of peace, war, and national security crises. With each case viewed in each of these contexts, comparisons between the Bush and Obama administrations can be made. In fact, they are being made in the world of the media, scholars, and political analysts and pundits today.

For example, many are calling the recent BP oil spill off the Louisiana coast "Obama's Katrina." Ironically, just before the oil spill occurred, President Obama announced plans for offshore drilling. Environmentalists decried this as a capitulation to big interest groups in the oil industry, a far cry from the change that was promised.

Similarly, some analysts view the Obama policies toward Iran as an extension of George W. Bush's inability or unwillingness to conduct regime change in two of the "Axis of Evil" members, Iran and North Korea. The position of the Bush administration in targeting Iraq for regime change, but not taking action against Iran and North Korea, even though both have nuclear programs, seemingly continues now in a similar manner in the Obama administration. The Bush administration imposed sanctions on Iran and North Korea. The Obama administration has continued this process. But pursuing regime change in either one of these countries is still off the table, although it is desired nonkinetically. At the same time, regime change anywhere would mirror the Bush administration policies; hence the Obama administration finds itself in a catch-22 situation.

Candidate Obama promised to do something about the humanitarian crisis in Darfur. However, no action has been taken. While the Obama administration has called for engagement and dialogue with Iran and Cuba, there has been no real progress. Activists worldwide were certain that President Obama would sign the Ottawa Treaty to ban landmines, but the administration decided not to take that step, despite promises for substantial changes in Cold War–era policies. This is also seen as a continuation of Bush-era policies.

The extremely complicated issue of closing Guantánamo underscores the complexities of asymmetric national security threats, and the need to deal with them effectively. Also an emphatic campaign promise, the issue of closing Guantánamo continues to plague President Obama, specifically in terms of implementation. The president maintains his position for closing it, but the legal, geographic, and security implications of this process have led to postponing its closure. Furthermore, with each terrorist attempt against the United

States, the debate of Guantánamo's utility reopens. Despite the Obama administration's fervent desire to detach itself from Bush-era policies, there may be a painful realization that some Bush policies will have to remain intact due to the realities on the ground. This tells us that presidential campaign promises for change may be appealing and promising, but the national security realities might dictate otherwise.

One area where the Bush and Obama administrations' respective national security policies merge is the war in Afghanistan. Not only do we see the Obama administration increasing resources and manpower for this effort, but we also see Secretary of Defense Robert Gates and CENTCOM commander General David Petraeus, both coming from the Bush administration, continuing their leadership in this and other major security affairs. In late 2009, when President Obama announced that he would increase the number of troops deployed to Afghanistan, many described this as similar to the Bush "surge" policy in Iraq, which was deemed very successful. Drone attacks in the Af-Pak region continue under the current administration as well. Many, including Afghan and Pakistani civilians, view this as a continuation of Bush-era policies.

In addition, some long-standing issues, like the tanker case and MRAPs (now for Afghanistan), illustrate how the resource allocation process and the checks and balances therein continue according to the law and prescriptions, regardless of who serves as commander in chief. Finally, perhaps the most critical test of the presidency is decision making during a national security crisis. The lessons learned from the 1973 Arab-Israeli War and the September 11, 2001, attacks against the United States potently resonate in present-day dilemmas and security concerns. As much as conventional symmetric threats are far from obsolete in the modern era, the rising asymmetric security threats arguably cause more sleepless nights for national security policy and decision makers. The Bush administration experienced the horrors of the September 11 attacks first-hand, and responded accordingly. Will the Obama administration also be tested as severely? What would the response look like? Are the Obama administration policies of outreach, engagement, and dialogue an ardent attempt to prevent such a catastrophe? Should we see them in that light?

To be fair, some of the major changes that the Obama administration has introduced should be highlighted: health care reform, financial reform, tax breaks for the middle class, and bailouts for the banking system. However, when it comes to major national security issues, continuity of previous policies, in many respects, seems to pervade the decision-making process.

National security policy making requires decision makers to deal with issues and policies of the predecessor. Upon taking office, a new president must measure campaign promises with the realities on the ground and assess the way ahead. Then, he has to decide the track to take, and implement it effectively with the resources available, while facing the daunting push and pull of Congress, the public, the media, and a host of other groups, institutions, and organizations. In this scenario, he is expected to perform a balancing act of continuity and change, without swinging the pendulum too hard too fast on either end, as that could be political suicide. In a February 2009 *Daily Times* article, Joseph Nye said it best when describing the Obama administration's challenges: "[President] Obama inherits a global economic crisis, two wars in which U.S. and allied troops are deployed, crises in the Middle East and South Asia, and a struggle against terrorism. He will have to deal with this legacy and chart a new course at the same time."

Hayat Alvi

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An asterisk (*) indicates an author from a previous edition of *Case Studies in Policy Making* who is no longer teaching in the National Security Decision Making Department (NSDM) as of spring 2010. They were original authors or contributed work and research to cases that have been subsequently edited, revised, and updated for inclusion in this edition by other members of NSDM.

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