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Pakistan's Nuclear Proliferation Activities and the Recommendations of the 9/11 Commission: U.S. Policy Constraints and Options

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Summary

In calling for a clear, strong, and long-term commitment to the military-dominated government of Pakistan despite serious concerns about that country's nuclear proliferation activities, The 9/11 Commission cast into sharp relief two long-standing dilemmas concerning U.S. policy towards Pakistan and South Asia. First, in an often strained security relationship spanning more than five decades, U.S. and Pakistani national security objectives have seldom been congruent. Pakistan has viewed the alliance primarily in the context of its rivalry with India, whereas American policymakers have viewed it from the perspective of U.S. global security interests. Second, U.S. nuclear nonproliferation objectives towards Pakistan (and India) repeatedly have been subordinated to other important U.S. goals. During the 1980s, Pakistan exploited its key role as a conduit for aid to the anti-Soviet Afghan *mujahidin* to avoid U.S. nuclear nonproliferation sanctions and receive some \$600 million annually in U.S. military and economic aid. Underscoring Pakistan's different agenda, some of the radical Islamists favored by its military intelligence service later formed the core of Al Qaeda and the Taliban.

A crucial U.S. policy challenge is to gain Pakistani cooperation in shutting down the extensive illicit nuclear supplier network established in the 1990s by the self-designated "father" of Pakistan's nuclear bomb, Abdul Qadir Khan, which provided nuclear enrichment technology to Iran, Libya, and North Korea, while at the same time supporting stability in Pakistan and gaining its maximum cooperation against terrorism. To date, the Administration appears largely to have acquiesced in Pakistan's refusal to allow access to Khan by U.S. intelligence officials. The Administration has been equally reluctant to publicly criticize the Musharraf government's apparent use of international arms dealers to obtain controlled U.S. dual-use technology for its own nuclear weapons program, in violation of U.S. law.

The 109th Congress has been asked by the Administration to provide some \$698 million in military and economic assistance to Pakistan for FY2006, part of a five-year, \$3 billion aid package. Some Members of Congress have expressed concern that, as during the 1980s, the urgent need for Pakistan's cooperation will prevent the Administration from dealing forcefully with its nuclear proliferation activities, and have introduced legislation that seeks to make U.S. assistance contingent on Pakistan's cooperation on nuclear proliferation.

This report: (1) briefly recounts previous failed efforts to reconcile American nuclear nonproliferation and other security objectives regarding Pakistan; (2) documents A.Q. Khan's role, whether with or without official involvement, in supplying nuclear technology to "rogue" states and how these activities escaped detection by U.S. intelligence agencies; (3) considers issues regarding the objectives, and viability of the military-dominated government of President Pervez Musharraf; and, (4) outlines and evaluates several U.S. options for seeking to gain more credible cooperation from Pakistan's regarding its nuclear activities while still maintaining effective counterterrorist cooperation. This report will not be further updated.

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Pakistan's Nuclear Proliferation Activities and the Recommendations of the 9/11 Commission: U.S. Policy Constraints and Options

Introduction: The 9/11 Commission Report and Long-Standing Contradictions in U.S. Policy Towards Pakistan and South Asia¹

In calling for a clear, strong, and long-term commitment to the military-dominated government of Pakistan despite serious concerns about that country's nuclear proliferation activities, *The Final Report of the 9/11 Commission* cast into sharp relief two long-standing dilemmas concerning U.S. policy towards Pakistan and South Asia. First, in an often strained security relationship spanning more than five decades, U.S. and Pakistani national security objectives have seldom been congruent. Pakistan has viewed the alliance primarily in the context of its rivalry with India, whereas U.S. policymakers have tended to view it from the perspective of regional stability and U.S. global security interests. Mutual security agreements concluded with Pakistan in 1954 and 1959, which remain in force, were part of the U.S. "Containment" policy towards the Soviet Union.² Second, U.S. nuclear nonproliferation objectives towards Pakistan (and India) repeatedly have been subordinated to other important U.S. goals. During the 1980s, Pakistan exploited its key role as a conduit for aid to the anti-Soviet Afghan *mujahidin* to avoid U.S. nuclear nonproliferation sanctions and receive annually some \$600 million annually in U.S. military and economic aid. Underscoring Pakistan's different agenda, some of the radical Islamists favored by its military intelligence service later formed the core of Al Qaeda and the Taliban.

During the 1980s, Pakistan successfully exploited its importance as a conduit for aid to the anti-Soviet Afghan *mujahidin* both to forestall the imposition of economic and military sanctions otherwise required by U.S. nuclear nonproliferation laws and to gain some \$600 million annually in U.S. military and economic aid. Ironically, not only did Pakistan develop its nuclear weapons capability during the

¹ This section was prepared by (name redacted).

² See section entitled "The United States Alliance," in Peter Blood (ed.), *Pakistan: A Country Study*: Federal Research Division, Library of Congress, updated April 1994. [[http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+pk0149\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+pk0149))]

1980s while receiving major U.S. economic and military assistance, but because it was partially hostage to Islamabad's own foreign policy objectives, the United States unwittingly facilitated the rise of a radical anti-U.S. Islamic terrorist movement.³ The ranks of Al Qaeda and the Taliban include some of the very same radical Islamists nurtured by Pakistan's Inter-Services Intelligence (ISI) organization and supported and armed by the CIA in the successful effort to drive the Soviet Army out of Afghanistan. Some observers view this unwanted legacy as cause for not losing sight of U.S. nuclear nonproliferation and other interests when seeking to forge closer antiterrorism ties to a country that has been a major and recent source of the proliferation of nuclear technology and materials, and which also faces some degree of risk of itself falling under the control of radical Islamists. This report seeks, in part, to explore whether there may be ways for gaining more leverage with Pakistan on the proliferation issue without jeopardizing Islamabad's cooperation on terrorism.

Figure 1. Country Map of Pakistan



Source: Map Resources. Adapted by CRS. (K.Yancey 11/12/04)

³ This is a major theme of Steve Coll's Pulitzer Prize-winning book *Ghost Wars: The Secret History of the CIA, Afghanistan and bin Laden, from the Soviet Invasion to September 10, 2001* (New York: Penguin Press, 2004). This theme is also emphasized in Michael Griffin, *Reaping the Whirlwind: The Taliban Movement in Afghanistan* (London: Pluto Press, 2001) John K. Cooley, *Unholy Wars: Afghanistan, America and International Terrorism* (London: Pluto Press, 2000).

Squaring the Circle: Antiterrorism Cooperation with a Prime Source of Nuclear Proliferation

Neither the *9/11 Commission Report* nor legislation enacted to implement its recommendations directly address the issue of balancing U.S. assistance to promote counterterrorism cooperation and stabilize Pakistan against Islamist extremism, with curbing nuclear proliferation activities emanating from Pakistan. Congress endorsed and funded for FY2005 only a request from the Bush Administration for a new five-year, \$3 billion, package of U.S. economic and military assistance to Pakistan. Congress also signaled its concern that Pakistan was not sufficiently cooperating with U.S. efforts to eliminate A.Q. Khan's illicit nuclear supply network by revising an existing reporting requirement under the Foreign Assistance Act, 1961, amended, but did not condition U.S. assistance to Pakistan on the imposing of any specific performance-related nonproliferation requirements.⁴ (See Legislation section at the end of this report.)

In theory, achieving the two most critical U.S. policy objectives relating to Pakistan — defeating radical Islamic terrorism and deterring nuclear proliferation — should be complementary, since the acquisition of nuclear weapons by terrorists is, in the words of the Vice-Chairman of the 9/11 Commission, former Representative Lee Hamilton, “the ultimate nightmare.” In practice, however, the historical record shows that the dual American objectives often have been operationally incompatible, especially the goals of promoting democracy and preventing nuclear proliferation. From that perspective, Vice-Chairman Hamilton observed at an August 24, 2004 hearing of the House International Relations Committee, “I think Pakistan represents as tough a problem as there is in American foreign policy today.”⁵

Press reports in late December 2004 and early 2005 concerning the covert supply network established by A.Q. Khan underscored the challenge of addressing simultaneously the terrorist and nuclear proliferation threats in U.S. policy towards Pakistan. The *New York Times* reported on December 26, 2004, that both the Bush Administration and the United Nations' International Atomic Energy Agency (IAEA) had gathered evidence in the Middle East and Asia indicating that Khan's network may be much more extensive than previously assumed. The extent and degree of threat posed by Khan's network has become apparent through the discovery in Libya of plans for an atomic bomb and other elements of a “nuclear starter kit,” evidence that Pakistan has been the source of most of Iran's uranium enrichment know-how and technology, strong indications that Pakistan has been the main source of centrifuges or components for North Korea's secret uranium enrichment program. U.S. and officials and experts of the IAEA strongly suspect that Khan's network also

⁴ By law, appropriated funds and any legislative content to appropriations bills apply only to the relevant fiscal year. Thus funds for the \$3 billion program can only be provided on a year-by-year basis.

⁵ Remarks of 9/11 Commission Lee Hamilton at a hearing, *9/11 Commission Recommendations for U.S. Diplomacy*. Hearing, House International Relations Committee, Aug. 24, 2004.

was involved in transporting North Korean uranium hexafluoride gas (UF₆), the feedstock for uranium enrichment centrifuges, to Libya.⁶

In addition to A.Q. Khan's network, U.S. officials revealed the existence of another illicit trafficking ring in January 2004, this one involved in illegally exporting sensitive U.S. technology for Pakistan's own nuclear weapons and missile programs. In September 2004, an Israeli arms dealer resident in South Africa, Asher Karni, pleaded guilty to five Federal felony charges related to his key role in a number of unlicensed exports of sensitive dual-use U.S. technology to Pakistan via South Africa and Dubai, including high speed switches called triggered spark gaps, which can be used in nuclear weapons. Karni's customer in Pakistan was an Islamabad-based company, Pakland, owned by Humayun Khan (no relation to A.Q. Khan), with long-standing ties to Pakistan's military and nuclear establishment. U.S. officials say that Karni's Cape Town company also supplied missile-related and possibly nuclear-related technology to India.⁷ (See details below).⁸

Congressional Concerns and Perspectives

In the face of continuing evidence that Pakistan remains involved in nuclear proliferation activities, some Members of Congress and some policy analysts and observers are concerned that the United States may be ignoring the lessons of the 1980s in again subordinating its nuclear nonproliferation interests to other policy objectives. During the 108th Congress, these concerns were raised by some Members of Congress in committee hearings and in proposed legislation that did not receive action.

Pending legislation in the 109th Congress likewise appears to reflect, in part, the desire of some Members of Congress to recalibrate the balance between U.S. counterterrorism and nonproliferation objectives. These initiatives would condition U.S. assistance on more cooperation from Pakistan concerning A.Q. Khan's network and the curtailment of other actions by Pakistan to oppose or undermine U.S. efforts to curb nuclear proliferation. (See details in section entitled "Legislation" at the end of this report.)

⁶ Glenn Kessler, "North Korea May Have Sent Libya Nuclear Material, U.S. Tells Allies." *Washington Post*, Feb. 2, 2005: A1; David E. Sanger and William J. Broad, "Using Clues From Libya to Study a Nuclear Mystery." *New York Times*, March 31, 2005; "As Nuclear Secrets Emerge, More Are Suspected." *New York Times*, Dec. 26, 2004: 1, 12. For a detailed summary based on court documents, see Jacob Blackford, "Asher Karni Case Shows Weakness in Nuclear Export Controls." September 8, 2004. [<http://www.isis-online.org/publications/southafrica/asherkarni.html>].

⁷ John Huges, "Arrest at DIA Illuminates Nuke Technology Fears." *Denver Post*, Jan. 13, 2004: A1; Murray Williams, "How SA Tip Set Up U.S. 'Nuke' Sting." *AllAfrica* broadcast, Jan. 14, 2004.

⁸ John Huges, "Arrest at DIA Illuminates Nuke Technology Fears." *Denver Post*, Jan. 13, 2004: A1; Murray Williams, "How SA Tip Set Up U.S. 'Nuke' Sting." *AllAfrica* broadcast, Jan. 14, 2004.

This report briefly recounts previous failed efforts to reconcile conflicting American regional security and nuclear nonproliferation policy objectives regarding Pakistan; (2) documents A.Q. Khan's role, whether with or without official involvement, in supplying nuclear technology to "rogue" states and how these activities escaped detection by U.S. intelligence agencies; (3) considers issues regarding the nature, objectives, and viability of the military-dominated government headed by President Pervez Musharraf; and, (4) outlines a series of unilateral and multilateral U.S. options, with a discussion of the advantages and disadvantages of each, for gaining further nuclear nonproliferation cooperation from Pakistan and forestalling future exports from Pakistan of nuclear and dual-use components, materials, and technology. This report will not be further updated.

Recommendations of the 9/11 Commission: "Hard Choices" or the Same Choices?

The 9/11 Commission Report emphasizes the need for "hard choices" and "difficult long-term commitments" to Pakistan.⁹ The Report explicitly notes that the need for a pragmatic approach inevitably involves compromises with other important U.S. interests such as democracy and nuclear non-proliferation. The Report does not address the issue of where the balance should be struck between supporting the Musharraf government as a necessary means of fighting terrorism.

Perhaps because of its relatively narrow mandate, the 9/11 Commission focused more on the urgency of maintaining a stable and cooperative government in Islamabad that would remain a partner in the war against terrorism and less on Pakistan's role as a source of nuclear proliferation. In the view of the 9/11 Commission, maintaining close cooperation with Pakistan in the fight against Al Qaeda and keeping Pakistan's nuclear capabilities out of the hands of terrorists depends critically on supporting President Pervez Musharraf's vision of a moderate, modernizing Islamic state.

The 9/11 Commission addressed only in an oblique manner the issue of Pakistan's past nuclear proliferation activities and the risk of further proliferation emanating from Pakistan. The Report's section on Pakistan acknowledges, but does not dwell on, Pakistan's continuing potential to be a source of technology and know-how for other states or terrorist groups intent on acquiring nuclear weapons. It noted President Musharraf's repeated assurances that "Pakistan does not barter with its nuclear technology," but also observed that "proliferation concerns have been long-standing."

A section of the 9/11 Commission Report dealing more generally with the threat of nuclear proliferation takes note of Khan's role in establishing illegal covert networks for global transfer of nuclear technology and materials, but its recommendations are not Pakistan-specific. Rather, the Report emphasizes multilateral solutions based on "an international legal regime with universal

⁹ This section was prepared by Richard Cronin.

jurisdiction to enable the capture, interdiction, and prosecution of smugglers” by any state that finds them operating covertly in its territory. The Report specifically calls for expanding the 2003 Proliferation Security Initiative (PSI) and the 1991 “Nunn-Lugar” Cooperative Threat Reduction (CTR) Program. The PSI emphasizes international cooperation to interdict WMD and ballistic missile shipments, while the CTR concentrates on securing nuclear weapons and other dangerous materials scattered throughout the territories of the former Soviet Union, which could fall into the hands of terrorists.¹⁰

Instead of hard choices, some observers judge that the Bush Administration and Congress have little choice but to provide substantial assistance to Pakistan to bolster Musharraf and to gain the closest possible antiterrorist cooperation from Islamabad, without regard to issues such as democracy and nuclear proliferation. From this perspective, the issue may be less one of choices than following the logic of unpleasant realities. The hardest choices may in fact be those faced by President Musharraf, given the broad public antipathy in Pakistan towards U.S. policy in the Middle East, including the war in Iraq and support of Israel, and the widely held misperception that the U.S. war on terrorism is in fact a war against Islam.

Past as Prologue: Pakistan and the Recurrent Dilemma of Conflicting U.S. Policy Goals¹¹

The effort to reconcile U.S. nuclear proliferation objectives towards Pakistan with more immediate American regional and global security concerns has a long and less than encouraging history. References by the 9/11 Report to Pakistan’s perception of the United States as an unreliable ally relate directly to fundamental differences in U.S. and Pakistani expectations of the alliance, and the consequent unwillingness of several U.S. Administrations to support Pakistan in its wars with India in 1965 and 1971.¹²

¹⁰ Eleven industrialized democracies — nine NATO countries plus Australia and Japan — endorsed a “Statement of Interdiction Principles” in Paris in September 2003. Since then, many additional countries have also endorsed the principles, and several exercises have been conducted by U.S., European, Australian, and Japanese forces. U.S. Department of State, Bureau of Nonproliferation, “Proliferation Security Initiative.” [<http://www.state.gov/t/np/c10390.htm>]. See links for additional information.

¹¹ This section was prepared by Richard Cronin.

¹² When India and Pakistan went to war in 1965 and 1971, the United States not only refused to assist Pakistan but cut off military assistance to both countries, an act which hurt Pakistan far more than India. Pakistani resentment of U.S. policy in the 1971-1972 war was particularly deep, because of Pakistan’s role in facilitating a secret trip to Beijing by National Security Advisor Henry Kissinger in July 1971, just a few months before the war with India, which led to the U.S. opening to China. The Nixon Administration disapproved of the military government of Pakistan’s brutal efforts to suppress a rebellion in East Pakistan, and believed that India, which it viewed as pro-Soviet, was exploiting the situation, but declined Pakistan’s request for military support when its forces became surrounded by the Indian army. Dennis Kux, *The United States and Pakistan: Disenchanted* (continued...)

India's 1974 Nuclear Test and the Beginning of the U.S. Policy Dilemma

Pakistan emerged as a major source of nuclear proliferation concern following India's underground test of 1974, itself a delayed response to China's 1965 nuclear test. Because its technological base was far smaller than India's, Pakistan concentrated on obtaining nuclear materials and technology from abroad, and by whatever means. Successful U.S. diplomatic efforts in the late 1970s to prevent France from delivering a uranium reprocessing plant to Pakistan, which could turn spent reactor fuel into plutonium marked the beginning of a long struggle to prevent Pakistan from acquiring what some, including the then-Prime Minister of Pakistan, Zulfikar Ali Bhutto, were already calling the "Islamic bomb"¹³

Unfortunately, the U.S. effort to close off Pakistan's ability to employ the reprocessing route to a nuclear bomb was already being undercut by A.Q. Khan's initiation of a secret program to produce high-enriched uranium, the alternative kind of nuclear weapons material. While working at a European nuclear facility in the Netherlands, URENCO, Khan had stolen the plans for an uranium enrichment facility. In 1983 a Dutch court convicted Khan of nuclear espionage in absentia, an action that was later overturned on a technicality.¹⁴ Because of Khan's success in acquiring the necessary materials and technology from abroad, including items obtained illegally from the United States, American efforts to prevent Pakistan from acquiring nuclear weapons became much more difficult. Eventually U.S. efforts were overtaken by Cold War developments that caused successive U.S. administrations and Congress to flinch repeatedly as Islamabad transgressed each new U.S. "red line."

¹² (...continued)

Allies. Washington: Woodrow Wilson Center Press and Baltimore, Johns Hopkins University Press, 2001. P. 194.

¹³ Bhutto was an urbane Pakistani aristocrat and a Muslim from the Shi'a minority, but by no means a radical Islamist. In his autobiography written in a jail cell following his overthrow by General Zia al-Huq in 1977, Bhutto partly justified his role in seeking a nuclear weapons capability for Pakistan by observing that there was a Christian bomb, a Jewish bomb, and a Hindu bomb, and vowing that Pakistan would build an Islamic bomb. In this particular context, Bhutto's use of the phrase appears related to his resentment of the perceived discrimination against Pakistan on the part of the United States and other western countries, and his belief that Israel and India enjoyed western favor because of bias against Islam. He also appeared to believe that Pakistan's acquisition of a nuclear weapons capability would garner more economic and political support from Middle East and Persian Gulf countries. Zulfikar Ali Bhutto, *"If I Am Assassinated..."*. New Delhi, India, etc.: Vikas Publishing House, 1979.

¹⁴ "Timeline: Pakistan's Nuclear Program." CNN.com [http://edition.cnn.com/2004/WORLD/asiapcf/02/04/pakistan.nuclear.timeline.reut/].

Key Role of Congress in Shaping Basic U.S. Nuclear Nonproliferation Policy

From the time of India's first "peaceful" underground nuclear test in 1974, Congress has played the leading role in formulating the legislative parameters governing U.S. nonproliferation policy. Pakistan's efforts to acquire technology from abroad, as well as concern that the Ford Administration had not responded adequately to India's abuse of U.S. and Canadian peaceful nuclear assistance, led Congress in the late 1970s to enact two landmark nuclear nonproliferation provisions to the Foreign Assistance Act (FAA) of 1961, amended. Section 669 of the FAA, first enacted in 1976 and expanded in 1977 (Symington-Glenn Amendment),¹⁵ banned U.S. economic, and military assistance, and export credits to countries that have not placed all of their nuclear facilities and materials under the inspection regime of the United Nations International Atomic Energy Agency (IAEA) or that deliver, receive, acquire or transfer nuclear enrichment technology. Section 670 (Glenn Amendment), first adopted in 1977,¹⁶ provided the same sanctions in the case of countries that acquire or transfer nuclear reprocessing technology or explode or transfer a nuclear device. These provisions, amended, are now contained in Sections 101 and 102 of the Arms Export Control Act (AECA).¹⁷

Congress had India as well as Pakistan in mind when it enacted the Nuclear Nonproliferation Act (NNPA) of 1978, which also generally enjoyed the support of the Carter Administration. The NNPA, among other things, bans the sale of U.S. uranium fuel to countries that do not accept the imposition of "full-scope" IAEA inspections and safeguards. Because of India's unwillingness to accept these terms, the United States abrogated a 30-year bilateral agreement under which it had committed to sell low-enriched uranium fuel for India's U.S.-supplied Tarapur Atomic Power Station.¹⁸

Alternating U.S. Policy Priorities Towards Pakistan

The United States chose its nuclear proliferation interests over its regional security interests in April 1979, when President Carter cut off U.S. assistance to Pakistan under Section 669 of the Foreign Assistance Act of 1961, amended, following the discovery that Pakistan had a secret uranium enrichment program. Later, in November of the same year, U.S.-Pakistan relations reached a nadir after a

¹⁵ P.L. 94-329, June 30, 1976 and P.L. 95-92, August 4, 1977.

¹⁶ P.L. 95-92.

¹⁷ Revised versions of these sanctions remain as Section 101 (Nuclear Enrichment Transfers; 22 U.S.C. 2799aa) and Section 102 (Nuclear Reprocessing Transfers, Illegal Exports for Nuclear Explosive Devices, Transfers of Nuclear Explosive Devices, and Nuclear Detonations; 22 U.S.C. 2799aa-1) of the Arms Control Export Act, amended. More detail is contained in CRS Report RL31502, *Nuclear, Biological, Chemical, and Missile Proliferation Sanctions: Selected Current Law*, by (name redacted), p. 9-11.

¹⁸ Richard Cronin and Warren Donnelly, "Congress and Nuclear Nonproliferation Policy," in *Congress and Foreign Policy, 1980*. Committee Print, House International Relations Committee, 1981.

mob attacked and burned the U.S. Embassy in Islamabad and several other U.S. facilities in response to false reports, possibly spread by the Iranian revolutionary leader, the Ayatollah Khomeini, that the United States was somehow involved in a takeover of the Grand Mosque in Mecca by Islamic extremists.¹⁹

The policy of giving priority to nonproliferation in relations with Pakistan proved short-lived. As in the case of the 9/11 attacks some three decades later, the December 1979 Soviet invasion of Afghanistan created a quick reversal of U.S. nuclear proliferation and other security policy priorities. President Carter's National Security Advisor, Zbigniew Brzezinski, set the tone in a memo of December 26, 1979, when he reportedly told the President that the United States had no choice but to repair its then-tattered relations with Pakistan. Reportedly, Brzezinski told the President that gaining Pakistan's support against the Soviet occupation "will require ... more guarantees to it [Pakistan], more arms aid, and, alas, a decision that our security policy cannot be dictated by our nonproliferation policy."²⁰

Pakistan's key role in the anti-Soviet war in Afghanistan continued to trump U.S. nuclear nonproliferation concerns until the withdrawal of Soviet troops in 1989. Congress supported this reordering of U.S. policy priorities in 1981, by adding a new Section 620E of the FAA, which gave the President qualified authority to waive for a period of six-years the provisions of Section 669. Congress annually appropriated funds for a six-year, \$3.2 billion program of economic and military assistance to Pakistan, much like the five-year, \$3 billion program requested by the Bush Administration for the period FY2005-2009. Despite Washington's periodic warnings, Pakistan not only continued to develop a nuclear weapons capability but companies connected with its nuclear program, were caught trying to export dual-use materials such as krytrons, used to trigger nuclear explosions, and specially hardened steel, in violation of U.S. export control laws. In 1986 Pakistan's military ruler, President Zia ul-Haq, reportedly told an interviewer "It is our right to obtain the technology. And when we acquire this technology, the Islamic world will possess it with us."²¹

¹⁹ Two Americans, a Marine defending the embassy and an airman in his apartment, and two Pakistani employees died in the attacks, but more than one hundred Americans and Pakistanis narrowly escaped burning to death. The Pakistani army stood by for several hours and only arrived on the scene after the riot was over. Steve Coll, *Ghost Wars: The Secret History of the CIA, Afghanistan and bin Laden, from the Soviet Invasion to September 10, 2001* (New York: Penguin Press, 2004): 21-23.

²⁰ *Ibid.*, p. 51.

²¹ "Pakistan's Nuclear Weapons — A Chronology." Weapons of Mass Destruction (WMD) series, Global Security.org
[<http://www.globalsecurity.org/wmd/world/pakistan/nuke-chron.htm>]

Failed Efforts to Reconcile U.S. Cold War and Nuclear Proliferation Objectives: The 1985 “Pressler Amendment” and the 1990 Aid Cutoff

In 1985, in the face of incontrovertible evidence that Pakistan was continuing to develop a nuclear weapons capability, despite repeated denials by President Zia ul-Haq, the Reagan Administration agreed to accept a new provision to U.S. foreign assistance law, the so-called Pressler Amendment, Sec. 620E(e) of the FAA, requiring the President to certify annually that Pakistan did not possess a nuclear explosive device as a condition of U.S. assistance. President Reagan and President George H. W. made such findings for three years after passage of the amendment, but each was successively more circumscribed. In 1990, President Bush informed Congress that he could no longer make such a certification, and that most economic and all military assistance to Pakistan would be suspended.²²

The 9/11 Commission’s references to Pakistan’s belief that past U.S. support has been self-serving relate in large part to this development, even though Islamabad had ample warning that its nuclear activities were putting its assistance in jeopardy. Although the U.S. Government denied the charge, Pakistani commentators asserted that the imposition of sanctions was directly related to 1989 withdrawal of the Soviet army from Afghanistan, which made Pakistan no longer critical to U.S. regional security policy.²³

India and Pakistan’s May 1998 Nuclear Tests and the Decline of Sanctions as a U.S. Nonproliferation Policy Approach

When India and Pakistan tested nuclear weapons in May 1998, Congress and the Clinton Administration moved with a haste surprising to many observers to waive most of the proliferation-related economic and military sanctions required by U.S. foreign assistance law on both countries. (Pakistan subsequently became ineligible for most forms of U.S. aid for other reasons — see below). The reaction of the President and Congress appeared to reflect several factors, including a decline in the belief of the efficacy of sanctions once the tests were a *fait accompli*, efforts by U.S. agricultural interests to prevent a loss of markets, and the rising influence of the India caucus in Congress.

Legislation passed in July 1998 made Pakistan eligible for agricultural export credits to buy U.S. winter wheat, while legislation signed into law in October that year, “The India and Pakistan Relief Act,” gave the President the authority to waive various economic sanctions for one year. Later in October 1998 Congress made this

²² Peter Blood (Ed.), “The United States and the West,” in *Pakistan: A Country Study*. Federal Research Division, Library of Congress, Research Completed April 1994. [<http://lcweb2.loc.gov/frd/cs/pkto.html>]

²³ For a brief chronology of U.S. nonproliferation policy and actions from 1976 to 1999, see Institute for International Economics, “Chronology of Events,” *Case Study 79-2, U.S. v. Pakistan*, Case Studies in Sanctions and Terrorism. [<http://www.iie.com/research/topics/sanctions/pakistan.htm>].

authority permanent and also extended it, with conditions, to include military assistance, foreign military sales credits, and exports to high technology entities, in the FY2000 Department of Defense appropriation. India was able to take advantage of many of these relaxations of sanctions but Pakistan remained ineligible for most U.S. assistance on two other grounds: General Musharraf's October 1999 military coup; and the fact that Pakistan had fallen into arrears in its debt repayments to the United States.²⁴

U.S. Policy Reversal After 9/11

The 9/11 terrorist attacks, as in the case of the December 1979 Soviet invasion of Afghanistan, immediately changed Pakistan's status from that of a problem country with which the United States had strained relations to a critical regional ally, but they put the U.S. Government once again at a disadvantage in dealing with Pakistan's nuclear activities. A number of nonproliferation experts agree with the critical importance of keeping Pakistan's nuclear weapons and materials out of the reach of terrorists, but they disagree with the Commission's assumption that President Musharraf is a sufficiently reliable partner, absent a more forthcoming attitude from the Pakistani government on the activities of A.Q. Khan and his network. Others question the whether Pakistan is fully committed to fighting the war against terrorism, let alone exercising nuclear restraint.

Among the most serious sources of concern is the well-documented past involvement of some members of the Army's Inter-Services Intelligence (ISI) organization with Al Qaeda and the Taliban, and the possibility that some officers retain sympathies with both groups. In the words of one analyst, "...Pakistan's official alliance with the United States in the war on terror has only increased the danger posed by al-Qaeda sympathizers within its nuclear establishment."²⁵ These considerations are seen as a significant factor in Musharraf's refusal to provide adequate information about A.Q. Khan's network. Some observers argue that without additional nonproliferation policy initiatives beyond those already adopted by the Bush Administration, embracing and supporting Musharraf is an inadequate response to danger posed by Pakistan's nuclear establishment and its past role as possibly the most important single source of nuclear proliferation to radical states.

Even if President Musharraf's assurances are taken at face value, Pakistan remains a significant source of proliferation risk. Still outside the Nuclear Nonproliferation Treaty, Pakistan is not bound by that treaty's prohibitions on nuclear weapon states transferring nuclear-weapons related technology or materials to any other state (or encouraging or assisting any state). It also is not a member of the Nuclear Suppliers' Group, a informal organization of countries producing nuclear materials and technology that has established guidelines for nuclear exports. While Pakistani leaders have proclaimed that their nuclear weapons are secure and that Pakistan has not been involved in selling or transferring nuclear weapons technology,

²⁴ CRS Report RS20995, *India and Pakistan: U.S. Economic Sanctions*, by (name red acted).

²⁵ Graham Allison, "Tick, Tick, Tick." *The Atlantic Monthly*, Oct. 2004: 58-60.

this claim is cast into doubt by the activities of Dr. A.Q. Khan over more than a decade.

Details on Pakistan's Proliferation Activities²⁶

Pakistan has been involved in the covert acquisition of nuclear-related technologies since at least the mid-1970s. Khan, a German-educated metallurgist worked in the early 1970s for a contractor to a European nuclear consortium, URENCO, located in the Netherlands. Reportedly, after India's 1974 underground nuclear test, Pakistan's then-Prime Minister Zulfikar Ali Bhutto asked Khan to head up a Pakistani uranium enrichment project. Khan returned to Pakistan in 1976 with secret plans for a Dutch-designed uranium enrichment centrifuge assembly.²⁷

The A.Q. Khan Network

Because Pakistan lacked an adequate industrial base or sufficient scientific expertise to build an enrichment facility from domestically available resources, Khan began almost immediately to put together a network to obtain necessary materials and technology from abroad. Evidence concerning any official Pakistani involvement in the network remains largely circumstantial. Khan's efforts were foiled a number of times by the U.S. and European governments, but it became clear by the mid-1980s that Pakistan was making significant progress towards the ability to produce weapons-grade uranium. What was not understood, however, that Khan also started using his network personally to reap millions of U.S. dollars by providing nuclear knowhow, technology, and materials to other countries seeking a nuclear weapons capability.

It is now clear that A.Q. Khan and several other scientists from the Khan Research Laboratories sold nuclear technology from the 1980s through 2002 to several countries, including Iran, Libya, and North Korea.²⁸ President Bush, in a speech that focused on proliferation at the National Defense University on February 11, 2004, outlined some aspects of Khan's network:

- Khan led the network, operating mostly out of Pakistan
- A factory in Kuala Lumpur, Malaysia, manufactured centrifuge parts (Scomi Precision Engineering)

²⁶ This section was prepared by (name redacted) and Richard Cronin.

²⁷ "Weapons of Mass Destruction (WMD): A.Q. Khan." Global Security.Org [http://www.globalsecurity.org/wmd/world/pakistan/khan.htm.]

²⁸ Pakistan's investigation also included Mohammed Farooq, who supervised Khan Research Laboratory (KRL)'s contacts with foreign suppliers; Yasin Chohan, a metallurgist at KRL; Major Islam ul-Haq, a personal staff officer; Nazeer Ahmed, a director at KRL; and Saeed Ahmed, head of centrifuge design. Between 11 and 25 employees of KRL were questioned, as well as the generals in charge of security at KRL, General Beg, and General Karamat. Simon Henderson, "Link Leaks," *National Review Online*, January 19, 2004.

- BSA Tahir, a Sri Lankan businessman, ran SMB computers in Dubai as a front company
- Network operatives in Europe, the Middle East, and Africa purchased other components.

Much of the information about exactly what Khan sold has been gathered from press accounts; although Khan reportedly signed a 12-page confession in early February 2004, the text of that confession has not been made public. Moreover, it appears that the confession was written under pressure, which could further distort the truth about Khan's activities.

Khan's confession came at the end of a two-month investigation by the Pakistani government into his activities, which was sparked by two related proliferation investigations: Iran was pressured by the IAEA in the fall of 2003 to reveal its foreign sources of centrifuge equipment, if only to support its argument that the presence of highly enriched uranium came from foreign contamination and not its own production of HEU; and Libya renounced its WMD programs in December 2003, revealing all its foreign sources of procurement. Only in February 2004 did Pakistan admit that nuclear technology was sold to those two countries. The Pakistani government and the North Korean government continue to deny any transfers of nuclear technology between Pakistan and North Korea. Yet, U.S. officials have testified before Congress that Khan provided such technology to North Korea.²⁹ President Bush stated in his February 11th speech that "Khan and his associates provided Iran and Libya and North Korea with designs for Pakistan's older centrifuges, as well as designs for more advanced and efficient models."³⁰ One popular theory is that Pakistan bartered uranium enrichment technology for missile technology from North Korea, but President Musharraf has stated that "whatever we bought from North Korea is with money."³¹

Khan reportedly sold a full range of technology — from blueprints and components to full centrifuge assemblies, uranium hexafluoride feedstock, and, reportedly, a nuclear weapon design. Assistance to Iran began in the late 1980s and continued at least until the mid-1990s.³² Assistance to Libya began in the early 1990s

²⁹ See, for example, George Tenet's testimony on February 24, 2004 to the Senate Select Committee on Intelligence that "We...believe Pyongyang is pursuing a production-scale enrichment program based on technology provided by A.Q. Khan." *The Worldwide Threat 2004: Challenges in a Changing Global Environment*.

³⁰ "President Announces New Measures to Counter the Threat of WMD," Remarks by the President, Fort Lesley J. McNair, National Defense University, Washington, D.C. [<http://www.whitehouse.gov/news/releases/2004/02/20040211-4.html>]

³¹ "Pakistan Rejects Nuclear Inspection," *London Financial Times*, February 18, 2004. See CRS Report RL31900, *Weapons of Mass Destruction: Trade Between North Korea and Pakistan*, by (name redacted), for additional evidence related to a barter arrangement.

³² Iran told the IAEA that its centrifuge enrichment program began in 1987; Lt Gen Kidwai, who briefed journalists on February 1, 2004 on Khan's confession, reportedly stated that cooperation began in 1989 and Khan transferred technology from 1989 to 1991. "Key Pakistani Is Said to Admit Atom Transfers," *New York Times*, February 2, 2004. The IAEA

and continued into 2002. Assistance to North Korea reportedly began in the mid-1990s and may have continued until 2003. However, a German intelligence investigation concluded as long ago as 1991 that Iraq, and possibly Iran and North Korea, obtained uranium melting information from Pakistan in the late 1980s.³³ A Pakistani official involved in Khan's investigation reportedly said North Korea ordered P-1 centrifuge components from 1997 to 2000.³⁴ Beyond blueprints, components, full assemblies of centrifuges, and low-enriched uranium, Libya also received — startlingly — a nuclear weapons design.³⁵ In the case of Iran and Libya, Khan provided technology for an advanced centrifuge design (the P-2).³⁶ There is no confirmation that the nuclear weapon design Libya received in 2001 or 2002 is from Pakistan, but some sources have reported that the design contained Chinese text and step-by-step instructions for assembling a 1960s HEU implosion device, which could indicate that Khan passed on a design Pakistan is long-rumored to have received from China.³⁷

Most nuclear proliferation experts contend that A.Q. Khan must have had significant logistical support from elements in the Pakistani military and the civilian nuclear establishment, whether acting in support of Pakistani security policy or his own desire for private gain, or both. In what appeared to be a carefully worded response at a December 21, 2004 press interview, Secretary of State Colin Powell indicated that the Administration accepted President Musharraf's statement that he had no knowledge of Khan's activities, but Administration officials have also indicated that U.S. intelligence officials have not been able to gain access to Khan.³⁸

³² (...continued)

report, GOV/2004/11, "Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran," February 24, 2004, says that Iran received P-2 drawings from "foreign sources" in 1994, p.8.

³³ "Agencies Trace Some Iraqi URENCO Know-How to Pakistan Re-Export," *Nucleonics Week*, November 28, 1991, pp. 1, 7-8. See also "CIA Assessment on DPRK Presumes Massive Outside Help on Centrifuges," *Nuclear Fuel*, November 25, 2002.

³⁴ "Scientist Claimed Nuclear Equipment Was Old, Official Says," *Los Angeles Times*, February 10, 2004.

³⁵ The International Atomic Energy Agency's (IAEA) report, GOV/2004/12, "Implementation of the NPT Safeguards Agreement of the Socialist People's Libyan Arab Jamahiriya," February 20, 2004 states that in 1997, foreign manufacturers provided 20 pre-assembled L-1 (equivalent to P-1) centrifuges and components for an additional 200 L-1 centrifuges, including process gas feeding and withdrawal systems, UF6 cylinders, and frequency converters.

³⁶ Libya received two of the P-2-type centrifuges in 2000 and placed an order for 10,000 more. Iran has claimed that it received P-2 plans, but no centrifuge components, and tried to develop a carbon composite rotor on its own, with no success. See the IAEA's GOV/2004/11 and GOV/2004/12 reports.

³⁷ "Warhead Blueprints Link Libya Project to Pakistan Figure," *New York Times*, February 4, 2004; and "Libyan Arms Designs Traced Back to China," *Washington Post*, February 15, 2004.

³⁸ U.S. Department of State, "Interview At Christian Science Monitor's Newsmaker Press (continued...)"

Other Nuclear Suppliers

Questions about President Musharraf's credibility appear to have been reinforced by the arrest in Denver in January 2004 of Asher Karni, a former Israeli military officer and military technology trader who resides in South Africa, for illegally exporting U.S. dual-use technology to Pakistan. U.S. authorities arrested Karni when he got off an international flight at Denver International Airport, on his way to a skiing holiday. Karni was charged with violating U.S. export control laws by using a front company and a bogus South African recipient to ship to Pakistan 66 triggered spark gaps — high speed electrical switches that can be used as detonators for nuclear weapons as well as for igniting rocket motors and separating missile stages. At the time, Karni was not aware that his movements were being monitored by U.S. agencies, and that, at the request of U.S. Commerce Department officials, the triggered spark gaps had been rendered useless by the manufacturer, PerkinElmer Optoelectronics, of Salem, Massachusetts. On earlier occasions, Karni was more successful, including a 2003 shipment of sophisticated oscilloscopes to Pakistan that can be used in nuclear weapons research.³⁹ U.S. officials disclosed on Friday, April 8, 2005, that Karni had entered a sealed admission of guilt to five Federal felony charges and had provided information about the export of the triggered spark gaps, as well as “sophisticated electronic equipment to government agencies in India, some of whom are involved in nuclear weapons and missile research.”⁴⁰

In mid-2003, after failed attempts to buy the triggered spark gaps directly were rebuffed by a French company and PerkinElmer, both of which asked for proof that Karni had an necessary export license from the Commerce Department, Karni engaged a New Jersey-based front company, Giza Industries, to purchase the items under false pretenses. According to U.S. officials, Karni and Khan had shipped these and other dual use items on the U.S. Export control list using a chain of companies in New Jersey, South Africa, the U.A.E., and Pakistan. Karni engaged a New Jersey company, Giza Technologies, Inc., of Secaucus, New Jersey, as a front purchaser, and took advantage of the fact dual use items can be exported to South Africa without an export license because South Africa is a member of the Nuclear Supplier Group. Because the triggered spark gaps are also used in a medical device (“lithotripter”) that breaks up kidney stones, the shipment was addressed to a South

³⁸ (...continued)

Briefing Luncheon.” Dec 21, 2004; “As Nuclear Secrets Emerge, More Are Suspected.” *New York Times*, Dec. 26, 2004, *op. cit.*

³⁹ David S. Cloud, “U.S. Says Banned Technology Went to Pakistan and India.” *New York Times*, April 9, 2005: A11. For a detailed summary based on court documents, see Jacob Blackford, “Asher Karni Case Shows Weakness in Nuclear Export Controls.” September 8, 2004, [<http://www.isis-online.org/publications/southafrica/asher Karni.html>].

⁴⁰ David S. Cloud, “U.S. Says Banned Technology Went to Pakistan and India.” *New York Times*, April 9, 2005: A11. For a detailed summary based on court documents, see Jacob Blackford, “Asher Karni Case Shows Weakness in Nuclear Export Controls.” September 8, 2004, [<http://www.isis-online.org/publications/southafrica/asher Karni.html>].

African hospital when it left Giza Technologies. Karni's company, Top-Cape Technology, of Cape Town was the actual recipient in South Africa.⁴¹

The fact that Karni sold other sensitive dual use technology to two laboratories connected with India's space program that are on the U.S. Commerce Department Entities List — organizations which are barred from receiving certain dual use exports — suggests to some observers that additional countries, including Iran, also may have used the network.⁴² Reportedly, of even more concern to U.S. officials, Humayun Khan was known to be close to the All Jammu and Kashmir Muslim Conference (AJKMC), an organization that supports Pakistani militants fighting Indian forces in Kashmir. The freight forwarder's tracking number indicated that the package was picked up in Islamabad by an employee of the AJKMC Lithography Aid Society, an organization purportedly connected to the Agha Khan Foundation, a charitable organization which maintains a world-wide network of hospitals.⁴³ The real purposes of the AJKMC Lithography Aid Society may be indicated by the fact that it apparently confused lithotripters with lithography, a printing process. Similarities in the Aid Society's stationary and address suggest it is just a cover address for Humayun Khan's Pakland PME.⁴⁴

U.S. officials reportedly have said that because of the large numbers of high speed electrical switches that had been sought, it seemed likely that they were destined for the Pakistani military and possibly for other countries that were attempting to produce nuclear weapons. Reportedly, U.S. investigators and analysts have not been able to connect the government of Pakistan, which denies any involvement in the illegal exports, directly to the transactions.⁴⁵ Reportedly, however, some U.S. officials have said in not-for-attribution interviews that the same figures in the Pakistani military who they suspect placed the orders for the triggered spark gaps and other sensitive technology via the Arni-Humayun Khan may also have worked with A.Q. Khan.⁴⁶

Some observers suggest, however, that the real problem is not proving the connection, but rather the reluctance of the U.S. government to risk jeopardizing Pakistan's anti-terrorism cooperation by aggressively pursuing the case with Pakistan. In early January 2005, then-Secretary of State Colin Powell told the press

⁴¹ "Pakistani Admits Ties to Nuclear Suspect." *Associated Press*, Feb. 20, 2004. [http://www.nytimes.com/aponline/international/AP-Pakistan-Nuclear-Trader.html].

⁴² "U.S. Records: Trader Aided India With Banned Missile Parts." *Dow Jones International News*, Feb. 19, 2004; "U.S. Scientists in India to Discuss Space Cooperation." *Dow Jones International News*, June 19, 2004.

⁴³ Jacob Blackford, "Asher Karni Case Shows Weaknesses in Nuclear Export Controls." September 2004. ISIS-Online. [http://www.isis-online.org/publications/southafrica/asherkarni.html].

⁴⁴ Blackford, "Asher Karni Case Shows Weaknesses," *ibid.* ISIS-Online. [http://www.isis-online.org/publications/southafrica/asherkarni.html].

⁴⁵ David S. Cloud, "U.S. Says Banned Technology Went to Pakistan and India." *New York Times*, April 9, 2005: A11.

⁴⁶ Josh Meyer, "Illegal Nuclear Deals Alleged." *Los Angeles Times*, March 26, 2005.

that U.S. officials “have presented evidence to Pakistan’s leaders of Pakistani involvement in the spread of nuclear weapons technology,” but he gave no indication of Pakistan’s response, if any.⁴⁷ Reportedly, according to other unnamed U.S. officials, the reluctance of senior policymakers to pursue the case against Humayun Khan reflects “a larger tug-of-war between federal agencies that enforce U.S. nonproliferation laws and policy-makers who consider Pakistan too important to embarrass.”⁴⁸

As in the A.Q. Khan case, the reported handling of this case by U.S. policymakers appears to suggest that American dependence on Pakistan for cooperation against terrorism has significantly influenced U.S. nuclear nonproliferation policy. Two apparent aspects of U.S. policy concern, or are likely to concern, critics of the Administration’s priorities.

First, the reported struggle between the State Department, on the one hand, and the Commerce Department and U.S. Customs service, on the other, over how aggressively the United States should pressure Pakistan for cooperation, creates a perception that nonproliferation policy has lower priority than antiterrorism cooperation with Islamabad. Reportedly, the State Department successfully blocked a request by the Commerce Department and the Department of Homeland Security to send investigators to Pakistan.⁴⁹ By reportedly not making forceful efforts to gain access to Humayun Khan in Pakistan, the United States may be reducing its ability to determine if any of the technology procured by Asher Karni’s Pakistani partner was transferred to other countries. U.S. investigators are said to be involved in a major effort to follow leads in South Africa, the U.A.E., India, and elsewhere, and the Administration has made “high-level” requests for cooperation directly to Musharraf, but some “senior officials” reportedly have complained in press interviews that these requests have not been made “forcefully or publicly.”⁵⁰ In April 2005 a Washington, DC, federal grand jury indicted Humayun Khan, who remains at liberty in Pakistan, both for conspiracy to violate U.S. export control laws, and for violating U.S. laws on three occasions. A conviction on all charges could cause Khan to be sentenced to incarceration for a maximum of 35 years.⁵¹

Second, some Members of Congress and proliferation experts argue that it is a mistake to acknowledge even tacitly nuclear weapons state status of Pakistan and India, or to acquiesce in continued pursuit of “vertical proliferation” by both countries through efforts to improve their existing nuclear weapons capability. In the context of the five-year NPT Review Conference that opened at the United Nations

⁴⁷ Matthew Pennington, “Relatives of Detained Nuclear Scientists Protest as Pakistan Investigates Leaks, Denies Proliferation.” *Associated Press Newswires*, Jan. 20, 2004.

⁴⁸ Josh Meyer, “Pakistan Linked to Purchase of Weapons Components: Investigators on the Trail of Oscilloscopes, Switches.” *Los Angeles Times*, April 3, 2005.

⁴⁹ Josh Meyer, “Pakistan Linked to Purchase of Weapons Components: Investigators on the Trail of Oscilloscopes, Switches.” *Los Angeles Times*, April 3, 2005.

⁵⁰ Josh Meyer, “Illegal Nuclear Deals Alleged.” *Los Angeles Times*, March 26, 2005.

⁵¹ Jim Kouri, “Feds Nail Pakistani Businessman for Nuclear Detonator Trafficking.” *www.MichNews.com*, April 17, 2005.

in early May 2005, Joseph Cirincione, the head of the Nonproliferation project of the Carnegie Endowment for International Peace, reportedly warned that allowing India and Pakistan to expand their arsenals of nuclear weapons without international oversight or the imposition of sanctions will result in a proliferation “chain reaction.”⁵²

Reported comments by U.S. officials in early 2005 indicate the reluctant acceptance by the Administration that Pakistan will continue to seek upgrade its nuclear capability, including possible future attempts to illegally export technology from the United States. While U.S. investigators and prosecutors are aggressively seeking to stop efforts by individuals and countries to obtain sensitive controlled U.S. technology, senior Administration officials reportedly say that the U.S. government has little leverage over Pakistan. In May 2005, U.S. officials who insisted on anonymity reportedly explained to a journalist that the Administration believed its options for putting pressure on Musharraf were few, because Pakistani cooperation remained crucial in the war on terrorism. One official reportedly made a distinction between horizontal proliferation to would-be nuclear powers and terrorist, and Pakistan’s efforts to enhance its existing nuclear capabilities. “It’s one thing for them to cooperate with us to stop [nuclear components] from going elsewhere, such as Iran,” the U.S. official reportedly said, “but they will never cooperate with us on efforts to stop things that they are trying to get. They’ve got their own program, which they are trying to keep.”⁵³

Intelligence Issues⁵⁴

It is not possible to describe from open sources what the U.S. intelligence community may have known, and when, about the A.Q. Khan network, but it is possible to date some U.S. approaches to Pakistan on this matter from press reports. In addition, it is possible to piece together hints of Pakistani collaboration in the nuclear field with the three countries in question. Finally, semi-annual, unclassified reports to Congress on proliferation (so-called Section 721 reports) from 1997 to the present may indicate what the intelligence community might have known.

U.S. officials reportedly approached Pakistani officials in 2000 with suspicions about activities conducted by Khan Research Laboratory (KRL) scientists. Pakistan reportedly responded with an investigation, forcing Khan into early retirement in March 2001.⁵⁵ Shortly after Khan’s dismissal, Deputy Secretary of State Armitage was quoted by the *Financial Times* as saying that “people who were employed by the nuclear agency and have retired” could be spreading nuclear technology to other

⁵² James Kitfield, “NPT Toters Amidst Growing Nuclear Threats.” *National Journal*, May 16, 2005: 1462-1469.

⁵³ Josh Meyer, “Illegal Nuclear Deals Alleged.” *Los Angeles Times*, March 26, 2005.

⁵⁴ This section prepared by (name redacted).

⁵⁵ “Pakistan informed US of ‘personal’ nuclear technology transfer,” *Agence France-Presse*, December 25, 2002 (based on report from *Jiji Press* news agency). According to this and other reports, the apparent tip-off was tens of thousands of dollars deposited into the personal bank accounts of Pakistani scientists at Kahuta (Khan Research Laboratories).

states, including North Korea.⁵⁶ However, a senior U.S. nonproliferation official explained weeks later that Armitage's statement led to confusion about the cooperation; that it was really limited to missile cooperation.⁵⁷ President Musharraf told reporters in 2004 that the information U.S. officials gave him several years ago was not specific enough for him to take action.

Reports of extensive official cooperation between Pakistan and the three countries might also have informed the intelligence community's assessment. Pakistan reportedly signed a nuclear cooperation agreement with Iran in 1986, although the terms of that agreement are unknown, and Iranian scientists received training in Pakistan in 1988. Libyan funding of the Pakistani nuclear weapons program in the early years long has been alleged, most notably in a 1981 book by Steve Weissman and Herbert Krosney called *The Islamic Bomb*.⁵⁸ Finally, Pakistan's well-documented missile cooperation with North Korea beginning in the early 1990s, as well as A.Q. Khan's dozen or so trips to North Korea were certainly known to the intelligence community.

Pakistan's Absence in U.S. Intelligence Reports on Proliferation

Despite the existence of intelligence information and rumors in the open literature concerning significant Pakistani contacts with radical states known to be seeking nuclear weapons, Congress has received little information on this issue in unclassified reports from intelligence agencies. The CIA's semi-annual reports to Congress on the acquisition of technology related to weapons of mass destruction (Section 721 of FY1997 Intelligence Authorization Act) do not highlight Pakistani involvement in supplying WMD technology. Pakistan is addressed as a country acquiring technology from 1997 to the first half of 2002 and then no longer appears in the reports as a country of proliferation concern.⁵⁹ China, Russia, and North Korea, are regularly included as key suppliers, but Pakistan has never been included in this list. The first time Pakistan is mentioned as a potential new supplier of technology is for the report ending June 2000.⁶⁰ The report covering the period to

⁵⁶ "US Fears North Korea Could Gain Nuclear Capability Through Pakistan," *Financial Times*, June 1, 2001.

⁵⁷ "North Korea Got a Little Help from Neighbors — Secret Nuclear Program Tapped Russian Suppliers and Pakistani Know-How," *Wall Street Journal Europe*, October 21, 2002; "North Korean-Pakistan Collusion Said Limited to KRL and Missiles," *Nuclear Fuel*, June 25, 2001.

⁵⁸ Weissman, Steve and Krosney, Herbert, *The Islamic Bomb*, Times Books: NY, 1981.

⁵⁹ This may be because countries with substantial advanced conventional weapons and weapons of mass destruction programs are excluded from the reports, as well as countries with little acquisition activity of concern.

⁶⁰ In the section called "Trends" of the January to June 2000 Section 721 report: "... as their domestic capabilities grow, traditional recipients of WMD and missile technology could emerge as new suppliers of technology and expertise. Many of these countries — such as India, Iran and Pakistan — do not adhere to the export restraints embodied in such supplier (continued...)"

June 2002 addresses “Emerging State and Non-State Suppliers,” but neither Pakistan nor A.Q. Khan is mentioned by name. The text states that traditional recipients of WMD technology might follow North Korea’s lead in supplying such technology to other countries or non-state actors. Additionally:

Even in cases where states take action to stem such transfers, there are growing numbers of knowledgeable individuals or non-state purveyors of WMD-related materials and technology who are able to act outside the constraints of governments. Such non-state actors are increasingly capable of providing technology and equipment that previously could only be supplied directly by countries with established capabilities.

South Asia is first mentioned as a region of key suppliers in the report covering January to June 2003. However, even in that report, there is no mention of a connection between South Asia, Iran, Libya, or North Korea. In the sections on Iran and North Korea, there is no information on foreign suppliers, and the section on Libya refers just to Libya seeking “technical exchanges” for dual-use equipment. A.Q. Khan is finally mentioned in the Section 721 report ending December 2004 (publication mid-2004):

The exposure of the A.Q. Khan network and its role in supplying nuclear technology to Libya, Iran, and North Korea illustrate one form of this threat, but commercial purveyors of dual-use technologies who routinely seek to circumvent international export control regimes to deliver WMD-related equipment and material to WMD-aspirant countries are of grave concern as well.⁶¹

Transfers to Iran. By and large, the U.S. intelligence community appears not to have identified Pakistan as a significant source of nuclear technology for Iran. Concerns about a potential Iranian nuclear weapons program date back to the 1970s, with a hiatus during the years of the Iran-Iraq War (1980-1989). With the end of that war, the attention of the Iranian government turned back to recreating its nuclear program, including the reactors at Bushehr. When many governments were persuaded not to participate in the project, Russia stepped in to fill the gap, and U.S. attention focused on the nuclear technology Iran might glean from Russian scientists and engineers. Although centrifuge enrichment techniques were a concern, the intelligence community had not focused on Pakistan as a particular supplier. In the Section 721 reports, Russia and China are repeatedly mentioned as suppliers to Iran’s nuclear program. From 1999 to 2001, the report admits that Iran has sought technology from a variety of sources, but especially Russia. Only in the report for the first half of 2002 is there mention that the U.S. intelligence community suspects Iran is interested in acquiring foreign fissile material and technology for weapons development.

⁶⁰ (...continued)

groups as the Nuclear suppliers Group and the Missile Technology Control Regime.” p. 11.

⁶¹ Central Intelligence Agency, *Unclassified Report to Congress on the Acquisition of Technology Relating to Weapons of Mass Destruction and Advanced Conventional Munitions, 1 July Through 31 December 2003*.

Transfers to Libya. Although the U.S. intelligence community long had suspected Libyan interest in developing nuclear weapons, most analysts attributed the limited Libyan success to sanctions and lack of an indigenous scientific and engineering base. The IAEA reported in February 2004 that Libya began receiving centrifuge components from A.Q. Khan in 1997. Yet, the Section 721 reports did not contain any text about a Libyan nuclear program until 2000. Then, the report noted that the suspension of U.N. sanctions “has accelerated the pace of procurement efforts in Libya’s drive to rejuvenate its ostensibly civilian nuclear program.” That report hinted that a nuclear cooperation agreement with Moscow would play a key role. Not until the report for January to June 2002 did the text note that Libya used its secret services “to try to obtain technical information on the development of WMD, including nuclear weapons.” If this was referring to Libya’s procurement of a nuclear weapons design from A.Q. Khan, it seems to imply less willingness by Khan to provide the plans than apparently was the case. The reports for the last half of 2002 and first half of 2003 only mention technical exchanges related to dual-use equipment.

Transfers to North Korea. At the time the October 1994 Agreed Framework with North Korea was negotiated, there was concern about, but scant evidence of, North Korean interest in uranium enrichment.⁶² Reports of North Korea’s procurement of enrichment-related equipment, particularly from Pakistan, date back to the mid-1980s (see above), but apparently U.S. intelligence agencies had no evidence of an actual enrichment program. Although a senior North Korean official reportedly admitted that it has an enrichment program to U.S. Assistant Secretary of State James Kelly during a confrontational meeting in Pyongyang in October 2002, Pyongyang has continued to publicly deny possessing such a program.⁶³

It is clear that the U.S. intelligence community knew of multiple trips by A.Q. Khan to North Korea, beginning in the mid-1990s. Whether the intelligence community attributed this to missile or nuclear cooperation is unclear, but the role of KRL in both nuclear and missile technology could point to collaboration in one or both areas.

⁶² North Korea joined the NPT in 1985 but did not implement its nuclear safeguards agreement until the early 1990s. When North Korea refused a request for a “special inspection” by the IAEA, it threatened to withdraw from the NPT in March 1993. The U.S.-DPRK Agreed Framework, negotiated by the Clinton Administration, was a response to this crisis. In return for North Korea’s agreement to freeze its nuclear program and eventually to dismantle and remove these facilities from North Korea, the United States agreed to lead an international consortium to construct two light-water nuclear power reactors and also provide interim supplies of heavy fuel oil. “U.S.-DPRK Agreed Framework.” Fact Sheet, Bureau of Nonproliferation, U.S. Department of State, Feb. 15, 2001. [<http://www.state.gov/t/np/rls/fs/2001/5284.htm>].

⁶³ Vice Minister Kim Gye Gwan told an unofficial U.S. delegation to Pyongyang in January 2004 that, “We do not have a highly enriched uranium program, and furthermore we never admitted to one.” Testimony of Dr. Sigfried Hecker before the Senate Foreign Relations Committee, “Update on the North Korean Nuclear Issue,” January 21, 2004; Anthony Faiola, “N. Korea Declares Itself a Nuclear Power.” *Washington Post*, Feb. 10, 2005. [[http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+pk0149\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+pk0149))]

In November 2002, the Central Intelligence Agency distributed a one-page, unclassified white paper to Congress on North Korean enrichment capabilities, which noted that the United States had “been suspicious that North Korea has been working on uranium enrichment for several years,” and that it obtained clear evidence “recently” that North Korea had begun constructing a centrifuge facility.⁶⁴ The CIA concluded that North Korea began a centrifuge-based uranium enrichment program in 2000. Further, the paper noted that, in 2001, North Korea “began seeking centrifuge-related materials in large quantities. It also obtained equipment suitable for use in uranium feed and withdrawal systems.” The CIA, the report said, had “learned that the North is constructing a plant that could produce enough weapons-grade uranium for two or more nuclear weapons per year when fully operational — which could be as soon as mid-decade.”⁶⁵

One media report in 2002 cited Western officials as stating that Pakistan’s aid included a complete design package for a centrifuge rotor assembly; another stated that Pakistan had exported actual centrifuge rotors (2,000-3,000).⁶⁶ In October 2002, the *Washington Post* reported that North Korean efforts to procure high strength aluminum and significant construction activity tipped off the United States.⁶⁷ Apparently, North Korea attempted to obtain materials from China, Japan, Pakistan, Russia, and Europe, but Pakistan provided most of the assistance related to the rotors.

In the Section 721 reports to Congress, however, there has been little mention of a North Korea-Pakistan connection in the nuclear area. In the first report in 1997, the text states that North Korea does not require significant outside assistance to produce WMD. In the 1998 report, there is no mention of any procurement related to the nuclear program, and the report for the first half of 1999 states that “Pyongyang sought to procure technology worldwide that could have applications in its nuclear program, but we do not know of any procurement directly linked to the nuclear weapons program.” This statement was included in both reports for 2000, but dropped in reports for 2001. The report for the first half of 2002 notes that North Korea began seeking centrifuge-related materials in large quantities in 2001 but makes no mention of where it procured those items. The report covering the last half of 2002 states that “we did not obtain clear evidence indicating that North Korea had begun acquiring material and equipment for a centrifuge facility until mid-2002.”

Although the intelligence community might place emphasis on “clear evidence” and the threshold of a “centrifuge facility,” this admission comes after media accounts in October and November 2002 of North Korea’s centrifuge procurement from Pakistan and perhaps seven years after that procurement apparently began. Only on February 24, 2004, weeks after Khan confessed to his activity, did CIA

⁶⁴ Untitled working paper on North Korea’s nuclear weapons and uranium enrichment distributed by CIA to Congressional staff on November 19, 2002.

⁶⁵ *Ibid.*

⁶⁶ “CIA Assessment on DPRK Presumes Massive Outside Help on Centrifuges,” *Nuclear Fuel*, November 25, 2002.

⁶⁷ “U.S. Followed the Aluminum; Pyongyang’s Effort to Buy Metal Was Tip to Plans,” *Washington Post*, October 18, 2002.

Director George Tenet tell the Senate Select Committee on Intelligence that “We ...believe Pyongyang is pursuing a production-scale uranium enrichment program based on technology provided by A.Q. Khan, which would give North Korea an alternative route to nuclear weapons.”

Role of A.Q. Khan, the Pakistani Government and Military⁶⁸

Whether the Musharraf government can be trusted to go forward with the United States as a security partner, let alone a Major Non-NATO Ally, while not putting the United States further at risk from nuclear proliferation, depends in part on the degree of culpability of the Pakistani government and military in A.Q. Khan’s activities. Even if, as has been alleged by the Pakistani government, Khan’s aggressive marketing of nuclear materials and technology to North Korea, Iran, and Libya was designed to further Khan’s outsized ego and financial interests, he could not have functioned without some level of cooperation by Pakistani military personnel, who maintained tight security around the key nuclear facilities, and possibly civilian officials as well. This section discusses the available information on Khan’s role and assesses the credibility of Pakistan’s denial that his activities were authorized or supported at the policy level in Islamabad.

Khan’s Motives

A.Q. Khan’s celebrity status and the degree to which he enriched himself by his activities have been cited by some as evidence that his activities were not government policy. In return for assistance provided by Khan and laboratory director Mohammed Farooq (a close associate of Khan), Iran allegedly funneled millions of dollars into foreign bank accounts held by the two men. Reportedly, Khan then used the money to purchase valuable real estate in both Pakistan and Dubai.⁶⁹ Khan reportedly made numerous trips to Tehran to share his expertise on uranium enrichment procedures. Compensation also may have included the gift of a villa on the Caspian Sea. Khan denies ever having traveled to Iran.⁷⁰ One unnamed aide to Musharraf reportedly said that “Khan had a completely blank check” while in charge of the Khan Research Laboratory (KRL). “He could do anything. He could go anywhere. He could buy anything at any price.”⁷¹

Khan’s reputation as a Pakistani “national hero” appears manufactured, produced at the expense of several other Pakistani scientists who played equal or greater roles in the country’s nuclear weapons program. One leading American expert called Khan an “egomaniac” who had mastered the press to transform his

⁶⁸ This section was prepared by (name redacted).

⁶⁹ “Pakistanis Exploited Nuclear Network,” *Washington Post*, January 28, 2004.

⁷⁰ “Iran Closes In on Ability to Build a Nuclear Bomb,” *Los Angeles Times*, August 4, 2003; “Inquiry Suggests Pakistanis Sold Nuclear Secrets,” *New York Times*, December 22, 2003.

⁷¹ “A Tale of Nuclear Proliferation,” *New York Times*, February 12, 2004.

image to that of national hero.⁷² Although Khan apparently did make Pakistan's nuclear weapons program possible by illegally acquiring the plans for an uranium enrichment facility, this is only one — albeit a critical one — of many steps required in the production of nuclear weapons. According to one source, much of the nuclear weapons production process was overseen by a lead scientist at the Pakistan Atomic Energy Commission (PAEC), which did not enjoy KRL's high public profile. That scientist, Samar Mubarakmand, may have known of Khan's activities and may even have used Khan and KRL as a decoy to divert attention from PAEC, where the most critical work on nuclear weapons was being carried out.⁷³

Whether President Musharraf's delicate treatment of Khan following the revelations of his activities reflects some level of official culpability is arguable. It has been pointed out that, despite evidence that he had committed serious breaches of Pakistani law, Khan was allowed (by Musharraf himself) to keep the many millions of ill-gotten dollars, while two former elected Prime Ministers had been exiled and barred from political office for corruption charges involving far less money.⁷⁴

Likewise, it appears that the Pakistani government was, at a very minimum, incredibly lax in responding to rumors of his activities. Even before Pakistan's May 1998 nuclear test, several scientists working with Khan at KRL reportedly warned government officials that Khan was involved in suspicious activities.⁷⁵ There have been reports that Khan's daughter smuggled out of Pakistan documents and a tape-recorded statement indicating that senior Pakistani military officers, including Musharraf, were aware of her father's proliferation activities.⁷⁶

On the other hand, Khan's self-promoted reputation as the father of Pakistan's nuclear weapons program created a motive not only for overlooking his transgressions, but also for seeking to share in his reflected glory. At a formal dinner marking Khan's March 2001 retirement from KRL, President Musharraf lavished praise on the famed metallurgist: "Dr. Khan and his team toiled and sweated, day and night, against all odds and obstacles, against international sanctions and sting operations, to create, literally out of nothing, with their bare hands, the pride of Pakistan's nuclear capability."⁷⁷ Given Musharraf's relative unpopularity, some observers suggest that his lavishing praise on Khan does not necessarily imply approval or complicity in his proliferation activities.

⁷² See op-ed by Stephen Cohen, "Out of the Nuclear Loop," *New York Times*, February 16, 2004.

⁷³ "Fission Smokescreen," *Outlook India* (New Delhi), February 23, 2004

⁷⁴ "What is the 'National Interest,'" *Friday Times* (Lahore), February 6, 2004.

⁷⁵ "Pakistan Warned on Nuke Scientist in '98," Associated Press Newswires, February 10, 2004.

⁷⁶ "Pakistan Demands Nuclear Papers," *London Sunday Telegraph*, February 16, 2004.

⁷⁷ Quoted in "Inquiry Suggests Pakistanis Sold Nuclear Secrets," *New York Times*, December 22, 2003.

Pakistani Government Response to U.S. Concerns

Deputy Secretary of State Richard Armitage and Assistant Secretary of State Christina Rocca reportedly met with Musharraf in Islamabad in October 2003 to present him with substantive evidence implicating Khan and several other scientists in a proliferation ring. One unnamed Pakistani official said that U.S. intelligence on Khan's movements was so detailed that it seemed a tracking device had been planted on his body.⁷⁸ In the same month, the network began to unravel at the other end: centrifuge equipment shipments to Libya were intercepted in the Mediterranean in October and by December 2003, Libyan leader Qadaffi renounced his weapons of mass destructions programs. Libya revealed, to the United States and to others, the assistance that Khan had provided.

On December 11, 2003, a Pakistani daily reported that two senior KRL scientists had "gone missing under mysterious circumstances." Later, it became known that laboratory director Mohammed Farooq had been the first Pakistani nuclear scientist to be "detained" for questioning by government authorities on November 27, following the delivery to Islamabad of an IAEA letter on Iranian uranium enrichment facilities.⁷⁹ Islam-ul Haq, a director at KRL, reportedly was picked up for questioning as he was dining at Khan's home on January 17, 2004.⁸⁰

As the investigation expanded in January 2004, many Pakistani's criticized the Musharraf government for making scapegoats of lower-level scientists to "appease" the United States. Said the relative of one detained KRL scientist, "It's all to praise or make happy the U.S.A. by framing innocent people." Opposition political groups were near-unanimous in their dismissal of proliferation charges, claiming they were part of U.S.-led effort to denuclearize Pakistan; they typically portrayed Musharraf's cooperation with the United States on this and other issues as capitulation to a foreign power.⁸¹

On January 20, Pakistan barred all scientists working on its nuclear weapons program from leaving the country. The officially-stated reason was to ensure that these individuals would be available for questioning, but many believed that the true purpose was to prevent them from talking to foreign investigators or journalists.⁸² One day later, Khan himself was fired from his position as science advisor to the prime minister, and ensuing reports indicated that Khan was under house arrest in the Pakistani capital. On February 1, Khan reportedly signed a detailed confession

⁷⁸ "Islamabad Received CIA Report on Dr Qaedee in Oct," *News* (Karachi), February 8, 2004.

⁷⁹ "Top KRL Scientists Go Missing," *Dawn* (Karachi), December 11, 2003; "Dr. Qadir's Fate Hangs in Balance," *News* (Karachi), January 24, 2004.

⁸⁰ "Pakistan Expands Nuclear Investigation," Associated Press Newswires, January 18, 2003.

⁸¹ "Pakistan Questions 8 Connected to Its Nuclear Program," *New York Times*, January 19, 2004.

⁸² Author interview with Samina Ahmed, South Asia Program Director, International Crisis Group, Islamabad, January 20, 2004.

indicating that he had provided Iran, North Korea, and Libya with uranium enrichment technologies and materials.⁸³

After conceding that some Pakistani scientists had been involved in proliferation, Musharraf suggested that personal gain was the central motivation, but other motives have been mentioned. When asked about motive, one unnamed senior Pakistani official did not mention greed at all, but rather indicated that Khan had transferred technologies to divert attention from the Pakistan's nuclear program, as well as to bolster Islamic solidarity.⁸⁴ Key Pakistani investigators reportedly have opined that Khan was motivated to defy the West, make himself a hero to the Islamic world, and gain wealth.⁸⁵ Khan's proliferation ring is reported to have earned \$100 million in deals with Libya alone.⁸⁶

Pakistani Military Role?

From the time of the revelations of A.Q. Khan's shipments of nuclear enrichment technology to North Korea, observers and commentators speculated that this very visible and celebrated figure must have had the cooperation of Pakistani Army and Air Force personnel at some level. In February 2004, as the Khan story was breaking in the international media, the *Washington Post* reported that Khan had told a friend and a senior Pakistani investigator that top Pakistani military officers, including Gen. Musharraf, had known about Khan's assistance to North Korea's uranium enrichment efforts. Khan also reportedly told investigators that General Mirza Aslam Beg, the former Army Chief (1988-1991), was aware of similar assistance being provided to Iran and that "two other Army chiefs, in addition to Musharraf, knew and approved of his efforts on behalf of North Korea."⁸⁷ One of these former army chiefs, Jehangir Karamat, became Pakistan's Ambassador to the United States in September 2004. A close friend of Khan — a person who may well have an interest in shifting blame away from the famed metallurgist — reportedly described Karamat (along with both Musharraf and Beg) as having been "aware of everything" Khan had done. Karamat's responsibility for Pakistan's ballistic missile programs in the late 1990s may have included his taking covert trips to North Korea and possibly having direct knowledge about Pakistan's alleged barter deal with Pyongyang involving nuclear technology and missiles.⁸⁸

Publicly, Khan accepted all of the blame. In his televised confession to the Pakistani people, Khan sought to "atone for some of the anguish and pain" he had caused by offering his "deepest regrets and unqualified apologies to a traumatized nation." He took "full responsibility" for the proliferation "activities" and

⁸³ "Key Pakistani Is Said to Admit Atom Transfers," *New York Times*, February 2, 2004.

⁸⁴ "Pakistanis Question Official Ignorance of Atom Transfers," *New York Times*, February 3, 2004.

⁸⁵ "A Tale of Nuclear Proliferation," *New York Times*, February 12, 2004.

⁸⁶ "Pakistani's Nuclear Earnings: \$100 Million," *New York Times*, March 16, 2004.

⁸⁷ "Musharraf Named in Nuclear Probe," *Washington Post*, February 3, 2004.

⁸⁸ David Armstrong, "Khan Man?," *New Republic*, November 9, 2004.

emphasized that the Islamabad government had “never ever” authorized them.⁸⁹ On the next day, in what appeared to many to be part of a scripted unfolding of events, President Musharraf granted and upheld a recommendation from his cabinet that Khan not be subjected to any proliferation-related criminal prosecution. Yet within a week, the Pakistani government announced that the pardon was “conditional” and “specific to charges made so far.”⁹⁰

Subsequent actions by the Pakistani government underscored doubts that Khan could have operated without some level of support by military officers and officials, whether acting on their own or carrying out government policy. Following Khan’s public confession, the Musharraf government announced that it had arrested at least five scientists and administrative officials from KRL, including Mohammed Farooq and Islam-ul Haq.⁹¹ On February 11, Pakistan’s Foreign Minister said that “nobody would be spared” in the ongoing criminal investigation, including Khan. On the same day, four civilian scientists and three retired military officers — including KRL department heads and brigadiers in charge of security there — were formally charged with proliferation-related crimes.⁹²

President Musharraf himself raised more questions when, on February 9, he acknowledged that he had long suspected that Khan was involved in proliferation activities, but argued that the United States had failed to provide convincing evidence until the fall of 2003.⁹³ Why Musharraf had not followed up on his own alleged suspicions has not been explained, but a *Los Angeles Times* report of May 16 suggests that after Musharraf’s coup in 1999, both he and Pakistan’s secretive Inter-Services Intelligence organization (ISI) became suspicious of Khan’s activities in Dubai. Reportedly Musharraf had decided, in the words of a senior ex-military officer, that “It was time to put an end to this dirty business.” Musharraf’s main concern, the article argues, was to avoid jeopardizing his desire to get rid of remaining U.S. economic and military sanctions.⁹⁴

Because of Khan’s popularity and Musharraf’s still shaky hold on power, so this explanation goes, the President had to move cautiously, but by March 2001 he was fed up with Khan’s continued meetings with “suspicious men” in Dubai. Musharraf

⁸⁹ “Pakistan’s Nuclear Founder Seeks Nation’s Forgiveness — Text,” Agence France Presse, February 4, 2004.

⁹⁰ “Musharraf Lifts Prosecution Threat From Khan,” *Financial Times* (London), February 6, 2004; “Pakistan Says Khan Pardon ‘Conditional,’” *Washington Post*, February 9, 2004.

⁹¹ “5 Nuclear Scientists and Officials Formally Arrested,” *Daily Times* (Lahore), February 6, 2004.

⁹² “‘Nobody Above the Law’ in Proliferation Case — Pakistani FM,” BBC News, February 11, 2004; “Pakistan Accuses 7 of Helping Khan Share Nuclear Secrets,” *Los Angeles Times*, February 12, 2004.

⁹³ “Pakistani Leader Suspected Moves By Atomic Expert,” *New York Times*, February 10, 2004.

⁹⁴ Douglas Franz, “Pakistan’s Role in Scientist’s Nuclear Trafficking Debated; Islamabad’s Awareness of a Black Market Led by the Father of Its Atomic Bomb Is Still Uncertain.” *Los Angeles Times*, May 16, 2005: A1.

forced the popular hero to retire as the head of Khan Research Laboratories, while making him a cabinet-level senior advisor on nuclear matters, and allowing him to continue to travel abroad. Reportedly, senior ex-military officers maintained that Musharraf was not knowledgeable of the extent of Khan's activities, but sacked him essentially for continued insubordination.⁹⁵

Politically, the Khan affair put President Musharraf in a difficult position. When the Pakistani Parliament met on February 16, opposition parties accused the government of covering-up the military's role in proliferating, humiliating Khan, appeasing the United States, and by-passing the country's elected representatives.⁹⁶

Some Pakistani commentators argued that the Pakistani state should in no way be held accountable for the actions of Khan himself. They pointed to Khan's allegedly "total control" of KRL, reports that the facilities were off-limits to both civilian politicians and the ISI, and an absence of evidence that Khan's actions were ever transformed into KRL policy.⁹⁷

General Beg, in particular, has long been suspected of having anti-U.S. and pro-Iranian tendencies. Henry Rowan, at the time a U.S. Assistant Secretary of Defense, has related a January 1990 meeting with Gen. Beg, who, he says, "said something like, 'If we don't get adequate support from the U.S., then we may be forced to share nuclear technology with Iran.'"⁹⁸ Another source attributes a similar statement by General Beg to late 1990, following the decision by President George H. W. Bush that he could not make the required certification to Congress that Pakistan did not have nuclear weapons, thus invoking the "Pressler Amendment," Sec. 620E(e) of the Foreign Assistance Act, 1961, as amended, requiring a cutoff of military and economic assistance to Pakistan.⁹⁹

Beg reportedly has strongly denied having ever having had control over A.Q. Khan — a role he assigned to former Prime Minister Benazir Bhutto (1988-1990, 1993-1996) and former President Ghulam Ishaq Khan (1988-1993).¹⁰⁰ The accusations concerning Benazir Bhutto and Ghulam Ishaq Khan have been made by others, as well. Former Pakistani President Farooq Leghari (1993-1997) insisted that he, former President Ghulam Ishaq Khan, and both former Prime Ministers Nawaz Sharif and Benazir Bhutto were fully informed about the country's nuclear weapons program as "nothing was kept secret from us." Leghari claimed that he had no

⁹⁵ *Ibid.*

⁹⁶ "Pakistan Opposition Charges Atomic Cover-Up," *New York Times*, February 17, 2004.

⁹⁷ See, for example, "Has Dr Khan Breached Pakistan's Nonproliferation Obligation?," *Friday Times* (Lahore), February 6, 2004.

⁹⁸ "Pakistan Threatened to Give Nukes to Iran," Associated Press Newswires, February 27, 2004.

⁹⁹ Inder Malhotra, *The Tribune*, March 4, 2004, at [http://www.southasianmedia.net/index_opinion4.cfm?id=23371].

¹⁰⁰ "Pak Army Never Controlled Nuclear Programme: Mirza Aslam Beg." *Press Trust of India*, Feb. 11, 2004.

knowledge of proliferation activities while in office and put responsibility squarely on the shoulders of A.Q. Khan.¹⁰¹ Benazir Bhutto's chief defense advisor from 1988 to 1990, the late Gen. Imtiaz, reportedly pressured Khan to transfer out-dated P-I centrifuges to Iran.¹⁰²

Others find Beg's denials less than credible. Addressing Gen. Beg's statements denying knowledge of transfers to Iran in the 1980s and 1990s, one former Pakistani nuclear scientist claimed that "nothing moves in the Pakistani nuclear spectrum without the knowledge of the chief of army staff."¹⁰³ Beg himself has claimed that the Pakistani Army has "never been in control" of the country's nuclear weapons program except during periods of military rule. He insisted that the ultimate authority was always the "Chief Executive" — in this case Benazir Bhutto. Bhutto herself claimed that Khan could not have been acting alone and that senior government or military officials were seeking to cover-up their own complicity. She even asserted that, as Prime Minister, she had turned down several requests by military officials and scientists to export Pakistan's nuclear technology.¹⁰⁴

An aide to then-PM Nawaz Sharif claimed that Beg approached him in 1991 with a proposal to sell nuclear technology to Iran. Reportedly, former U.S. Ambassador to Pakistan, Robert Oakley, said that Beg told him that same year of an "understanding" with the head of Iran's Revolutionary Guard Corps that Pakistan would help Iran with its nuclear program in return for conventional weapons and oil. Beg's alleged motive was to form a "grand alliance" of Islamic countries with the ability to resist American power in the wake of the U.S.-led military successes in Kuwait and Iraq in early 1991. Beg denies all claims that he sought to provide nuclear assistance to Iran.¹⁰⁵

The public reaction to the accusations against Khan was predictably nationalistic and anti-American. Many Pakistani observers accused the "foreign media" of bias in singling out Pakistan while ignoring the roles played by the citizens of other countries, including those in the West. They also criticized the IAEA and the United States for turning a blind eye to the nuclear weapons programs of Israel and India.¹⁰⁶ Representative media commentary in Pakistan warned of a "clear and present danger that the West is threatening to dismantle [Pakistan's] nuclear program" through the establishment of "intrusive inspection regimes." Former ISI chief Lt. Gen. Hamid

¹⁰¹ "I'd No Information on N-Spread During My Term, Argues Leghari," Pakistan Press International, February 9, 2004.

¹⁰² "Scientist Claimed Nuclear Equipment Was Old, Official Says," *Los Angeles Times*, February 10, 2004.

¹⁰³ "Dr. Qadir's Fate Hangs in Balance," *News* (Karachi), January 24, 2004.

¹⁰⁴ "'Pak Army Never Controlled Nukes,'" *Times of India* (New Delhi), February 10, 2004; "Bhutto Alleges Nuclear 'Cover-Up,'" BBC News, February 23, 2004; "'Military Officials Sought My Permission to Sell N-Tech,'" *Daily Times* (Lahore), February 25, 2004.

¹⁰⁵ "Pakistanis Say Nuclear Scientist Aided Iran," *Washington Post*, January 24, 2004.

¹⁰⁶ See, for example, "Countering Proliferation," *Dawn* (Karachi), February 3, 2004.

Gul suggested that the United States would “exploit” the situation to gain joint custody of Pakistan’s nuclear weapons “to the total satisfaction of Israel.”¹⁰⁷

A number of civilian politicians and analysts from across Pakistan’s political spectrum were quick to suggest that Khan was “falling on his sword” to protect others in the Pakistani government and military who also were involved in proliferation activities, perhaps even including Musharraf himself.¹⁰⁸ Others suggested that the series of events leading up to Khan’s confession and pardon appeared to have been tightly scripted, and may have been privately endorsed by a U.S. government keen to protect a key counterterrorism ally.¹⁰⁹

Bush Administration Statements

The Bush Administration has maintained that “there was no evidence that the top officials of the Pakistani government were complicit in or approved of [Khan’s] proliferation activities.” The Bush Administration has found insufficient evidence to trigger U.S. nonproliferation laws, even though U.S. officials claim neither to have asked for access to Khan nor believed that such access was necessary.¹¹⁰ Some senior U.S. officials have insisted that the United States is receiving the cooperation it needs from Pakistan, but in testimony to Congress on April 29, 2004, then-Deputy Secretary of State Richard Armitage said that the Administration was “impatient for even greater efforts from President Musharraf.”¹¹¹ In a feature article on December 26, 2004, the *New York Times* reported that the Administration had received little new information from Pakistan to its questions about where Khan obtained the plans for a nuclear weapon. The article also maintained, based on unnamed sources, that the Administration had not gained access to his chief assistant, Buhari Sayed Abu Tahir, who has been jailed in Malaysia as a consequence of the discovery of Khan’s network.¹¹²

In view of the domestic political sensitivity of the issue for President Musharraf, other statements by U.S. officials also appear designed to minimize publicly American concern about the light treatment given A.Q. Khan by Musharraf, despite the gravity of his actions. Responding to a question during a *CNN* interview about President Bush’s claim during the September 30, 2004 presidential debate, that “the

¹⁰⁷ “Nuclear Program Under Pressure,” *News* (Karachi), January 30, 2004; Gul quoted in “Pakistan’s Rogue Scientist,” *India Today* (New Delhi), February 16, 2004.

¹⁰⁸ See, for example, “Pakistan Broadcasts Scientist’s Confession,” *Los Angeles Times*, February 5, 2004.

¹⁰⁹ “Musharraf Clears Nuclear Scientist in Sale of Secrets,” *Wall Street Journal*, February 6, 2004; “Pakistan and Its Proliferator,” *Christian Science Monitor*, February 6, 2004; “The Bomb Traders,” *Far Eastern Economic Review* (Hong Kong), February 12, 2004.

¹¹⁰ Testimony of Under Secretary of State John Bolton Before the House International Relations Committee, March 30, 2004.

¹¹¹ Testimony of Deputy Secretary of State Richard Armitage Before the House Appropriations Committee, April 29, 2004.

¹¹² “As Nuclear Secrets Emerge, More Are Suspected.” *New York Times*, Dec. 26, 2004.

A.Q. Khan network has been brought to justice,” then-National Security Advisor Condoleezza Rice reportedly noted the difficult situation for President Musharraf and that “A. Q. Khan, in a sense, has been brought to justice because he is out of the business that he loved most.” Rice reportedly stated further “And if you don’t think national humiliation is justice for what he did, I think it is. He’s nationally humiliated.”¹¹³

Rather than publicly demanding that the Musharraf government make a full revelation of A.Q. Khan’s activities, then-Secretary of State Colin Powell and other State Department officials insisted that the United States should play no role in judging Musharraf’s handling of the matter. A State Department briefer on February 5, 2004, said he was “impressed by the seriousness of the investigation” being conducted in Pakistan and expected that Pakistan would share with the international community the information that is gleaned through the investigation. Powell explicitly described the investigation as “a Pakistani internal matter” at a press conference in Islamabad on March 18, 2004, though he also said that he was confident that the Pakistani authorities would provide “full disclosure” so that the United States and Pakistan could work together to completely eliminate Khan’s network.¹¹⁴ Many Pakistani analysts voiced their approval of the conclusion that Khan’s activities breached no international laws, thus justifying Musharraf’s “prerogative” to pardon.¹¹⁵

Other observers have not expressed the same level of confidence that the investigation would achieve the stated objectives. The Director-General of the IAEA called Khan “the tip of an iceberg” and claimed that his case “raises more questions than it answers. ... Dr. Khan was not working alone.”¹¹⁶ A *New York Times* editorial asserted that “Pakistan’s military — and that means General Musharraf — was, without question, aware of and part of this illicit and perilous commerce. Yet the Bush administration’s reaction,” the editorial continued, “has been one of grateful acceptance.”¹¹⁷ Indian reactions were predictably dismissive of the Khan pardon as a “grand charade” designed to protect the Pakistani military. Many were equally discomfited by the Bush administration’s quickness to call Khan’s activities an “internal matter.”¹¹⁸

¹¹³ “Father of Pakistan’s Nuclear Bomb Punished Through National Humiliation: Rice.” *Agence France Presse*, Oct. 3, 2004.

¹¹⁴ “State Department Noon Briefing,” U.S. Department of State Washington File, February 5, 2004; “Remarks by Secretary of State Colin L. Powell and Pakistan Foreign Minister Khurshid Kasuri. U.S. Embassy, Islamabad, March 18, 2004.

¹¹⁵ “Sorry Saga of Nuclear Proliferation,” *Daily Times* (Lahore), February 8, 2004.

¹¹⁶ “Pakistani Scientist Tied to Illicit Nuclear Supply Network,” *Washington Post*, February 5, 2004.

¹¹⁷ “Ending Pakistan’s Nuclear Trade,” *New York Times*, February 7, 2004.

¹¹⁸ “Pak Scientist’s Pardon a Grand Charade,” *Times of India* (New Delhi), February 9, 2004.

Issues Concerning the Viability of the Musharraf Government As a Long-Term U.S. Security Partner¹¹⁹

The critical importance of gaining cooperation against terrorism has been the Bush Administration's main justification for largely setting aside U.S. nonproliferation concerns in the case of Pakistan. Not only does the United States need Pakistani cooperation, but Musharraf's survival has been seen by both the Administration and the 9/11 Commission as an essential requirement for maintaining and increasing Pakistani cooperation. Given the troubled history of U.S.-Pakistan security cooperation, the 9/11 Commission Report emphasizes, in particular, the necessity of avoiding a repetition of the past cycle of engagement, disengagement, and reengagement with Pakistan. The following section addresses the stability of the Musharraf government and the prospects for a continuation of current Pakistani policy should President Musharraf leave the scene, for whatever reason.

Near-Term U.S. Security Needs Versus Longer Term Human Rights and Democracy Goals

U.S. interest in Pakistani democratization exists in tandem with the perceived need to have a stable and effectively-administered ally in the international anti-terrorism coalition. However, while many observers believe that U.S. interests in combating terrorism and weapons proliferation in South Asia entail a "trade-off" with regard to other concerns, some contend that the human rights situation in Pakistan may itself be a crucial aspect of the incidence of terrorism and religious extremism.¹²⁰ Congressional oversight of U.S.-Pakistan relations in a March 2003 hearing included Member expressions of concern about problems with Pakistani democratization and the danger of the United States "giving full recognition to a military takeover" through continuous waivers of coup-related aid restrictions.¹²¹ The military continues to dominate Pakistan's centralized decision making process and, while in office, Prime Minister Jamali referred to President Musharraf as being his "boss."¹²²

While it is possible to argue that Pakistan is somewhat more democratic since the October 2002 elections, many analysts note that the country's democratic institutions and processes are inflexible and unaccommodating of dissent. These observers see Pakistan's political parties seriously weakened in recent years, with the

¹¹⁹ This section was prepared by (name redacted).

¹²⁰ A House panel received expert testimony indicating that Pakistan's worsening religious freedom situation is "part of the larger problem of the suppression of democratic freedoms" there ("House International Relations Subcommittee on International Terrorism, Nonproliferation and Human Rights Holds Hearing on State Department Report on International Religious Freedom," FDCH Transcripts, February 10, 2004).

¹²¹ "Transcript: Hearing of the Subcommittee on Asia and the Pacific of the House International Relations Committee," Federal News Service, March 20, 2003.

¹²² "Jamali: Musharraf Elected President for Five Years," Pakistan Press International, April 18, 2003.

military's influence correspondingly more profound.¹²³ Moreover, numerous commentators reject the 9/11 Commission's "best hope" label for Musharraf himself as myopic and repetitive of past U.S. reliance on Pakistani military regimes, especially in light of their view that Pakistan's uncertain political stability is rooted in Musharraf's policies and in the personal support he receives from the United States.¹²⁴

President Musharraf remains generally a popular figure in Pakistan, but he has been an object of hatred for Islamic radicals, including those affiliated with domestic and international terrorist organizations. A March 2004 survey found that 86% of Pakistanis view Musharraf favorably (with 60% viewing him *very* favorably), but 65% also said that they support Osama bin Laden. Musharraf's government depends on an alliance of six Islamist parties, which use the acronym MMA ("United Action Front," in English) to maintain a majority in the national parliament. The same alliance controls the assemblies in two provinces bordering Afghanistan — Baluchistan and the North-West Frontier Province (NWFP).¹²⁵ The support of the Islamist parties has been brought into question by Musharraf's decision to break his commitment to step down as Army commander at the end of the year, a promise he made in 2003 to secure the support of a six Islamic parties in parliament.

The bargain struck with the Islamic parties served both to maintain a governing majority in the national assembly and to secure passage of an amendment, the 17th to the Pakistani constitution, which, among other things, legitimized Musharraf's 1999 military coup.¹²⁶ The response to Musharraf's indication that he would remain Army chief until the end of his presidential term in 2007 suggests that his popularity may have declined. Musharraf has justified keeping his uniform as necessary to maintain stability.¹²⁷

Overall, the events of September 11, 2001 and after appear to have assisted Musharraf in strengthening his grip on power. One former Pakistani political advisor and diplomat notes that, "Each of Pakistan's patriarchs have based their claim to power on grounds of U.S. support and their own ability to provide good governance."¹²⁸ The perceived U.S. need for a stable and reliable regional ally in its ongoing counterterrorism efforts in South Asia have some analysts concluding that Musharraf remains in a position to take further domestic political advantage of current geopolitical dynamics.

¹²³ "Sustainable Democracy," *Daily Times* (Lahore), May 24, 2004; "Many See Musharraf Keeping Army Post to Cement Power," *New York Times*, September 18, 2004.

¹²⁴ "The 'Best Hope' in South Asia," *Hindu* (Madras), August 13, 2004; "As U.S. Talks of Liberty, Musharraf Scorns It," *Los Angeles Times*, July 4, 2004.

¹²⁵ For more background on Pakistani politics see CRS Report RL32615, *Pakistan's Domestic Political Developments*, by (name redacted).

¹²⁶ "Musharraf's Uniform Divides Pakistan." *BBC News*, Sept. 14, 2004.

¹²⁷ Pew Research Center, "A Year After the Iraq War," March 16, 2004; "Musharraf Says Most Pakistanis Want Him to Stay On As Army Chief." *Associated Press*, Sept. 6, 2004.

¹²⁸ "Replaying the Old Marching Tune," *Indian Express* (Bombay), July 10, 2002.

Many analysts believe the advance of democracy and civil society in Pakistan is key to the long-term success of stated U.S. policy in the region, although the 9/11 Commission Report implies that in the short run, anyway, supporting Musharraf is an absolute necessity. At a July 2004 hearing of the Senate Foreign Relations Committee, all three private witnesses, who were veteran Pakistan watchers, agreed about the potential problems inherent in a perceived U.S. preference for bolstering Musharraf's authoritarian leadership at the expense of Pakistan's democratic institutions and civil society. One witness offered that Musharraf is best seen as a "marginal satisfier" who will do only the minimum expected of him. He recommended that, "The United States must alter the impression our support for Pakistan is essentially support for Musharraf."¹²⁹

Doubts about Musharraf's popularity have been echoed by a leading Pakistani analyst, who contends that all of the Pakistani president's major policy shifts after September 2001 have come through compulsion by external pressure or events and that, while the direction of Pakistan's policy change has been appropriate, "the momentum of change is too slow and awkward and unsure to constitute a critical and irreversible mass."¹³⁰ Many leading Pakistani commentators insist that only by allowing the country's secular political parties fully into the system can the country realize stable and enduring democracy.¹³¹

American policy makers, however, generally agree with the 9/11 Commission that U.S. interests are for the time being best served by the presence of a strong and secure Islamabad leadership. Thus, while early optimism about Musharraf's potential as a reformer has waned considerably, there are those who still conclude that the existence of an unstable and possibly Islamicized or failed state between Afghanistan and India — a state in possession of nuclear weapons — is a far less desirable circumstance than the present one in which a powerful and secular military institution maintains a reasonable degree of order in Pakistan. For some, this argument has become less persuasive as the country's law-and-order situation has deteriorated in 2004. Pakistan's fragile democratic institutions are under continuous threat from the authoritarian influences of the country's powerful military and quasi-feudal economic structures. Given a stated U.S. position that, "Democratic institutions are required if Pakistan is to thrive economically and to develop further into an enlightened and moderate Muslim state,"¹³² Pakistan's domestic political developments likely will be closely monitored by the United States.

¹²⁹ Statement of Professor Marvin Weinbaum, "Senate Foreign Relations Committee Holds Hearing on Pakistan and Counterterrorism," FDCH Transcripts, July 14, 2004. At the same hearing, Ambassador Teresita Schaffer concurred, saying that the United States is attempting to deal with Pakistan through "policy triage and by focusing on the personal leadership of President Musharraf," both of which are "flawed concepts."

¹³⁰ "Happy Birthday Pakistan," *Friday Times* (Lahore), August 13, 2004.

¹³¹ "Agenda for Pakistan's New Prime Minister," *Nation* (Lahore), September 1, 2004; "What the Country Needs," *Friday Times* (Lahore), September 12, 2003. See also "Musharraf's Successor," *Friday Times* (Lahore), March 19, 2004.

¹³² "Ambassador Powell Outlines U.S. Policy Toward Pakistan," U.S. Department of State Washington File, August 20, 2004.

Succession Issues

An acute concern of many U.S. policy makers is the issue of political succession in Pakistan, especially as it relates to potential domestic upheaval and control of that country's nuclear arsenal.¹³³ The constitutionally designated successor to the President is the Chairman of the Senate, currently a member of the military-friendly Pakistan Muslim League-Quaid-e-Azam (PML-Q) party and Musharraf loyalist Muhammadmian Soomro, an international banker from a well-known Sindhi family. It is the President's prerogative to appoint Army Chiefs. The consensus view among analysts has the Pakistani military maintaining its substantive administration of the country in the event of President Musharraf's premature removal. The nature of such a potential removal likely would influence the scope and intensity of military governance. For example, if Musharraf were removed through violent means, it is quite possible that the army would declare martial law and rule directly for a period. In any case, it is widely assumed that the hierarchical solidarity and historic professionalism of Pakistan's military would result in its continued effectiveness as a stabilizing force, at least in the short- and perhaps middle-term. Despite the apparent sturdiness of the military's command structure, there remains widespread pessimism about the ability of political institutions built by Musharraf to survive his sudden removal, and doubts remain about the viability of political succession mechanisms.¹³⁴

After his September 2001 policy shift, Musharraf moved to purge pro-Taliban Islamists from the higher ranks of the military. In October 2001 Musharraf promoted a trusted associate, Lieutenant General Muhammad Yusuf, chief of the general staff of the Pakistan army, to the rank of general and appointed him as Vice Chief of the Army Staff (VCOS), the senior-most position after Musharraf. Reportedly, Musharraf earlier had entrusted Yusuf, said to be a ideological moderate, with responsibility for sensitive negotiations with U.S. officials concerning American military operations in Afghanistan.¹³⁵ Also in the immediate wake of 9/11 Musharraf named Lt. Gen. Ehsan-ul Haq, corps commander of Peshawar, as the new Director General of the powerful ISI. Haq replaced Lt. Gen. Mahmood Ahmed, an officer reportedly regarded as having ties to the Taliban and having been insufficiently responsive to U.S. requests for intelligence on Osama bin Laden.

¹³³ "A Nuclear Headache," *New York Times*, December 30, 2003. The physical security of Pakistan's nuclear weapons materials and technologies became a vital issue in the wake of September 2001. Al Qaeda members reportedly have met with Pakistani nuclear scientists (Kamran Khan and Molly Moore, "2 Nuclear Experts Briefed Bin Laden, Pakistanis Say," *Washington Post*, December 12, 2001). See also CRS Report RL31589, *Nuclear Threat Reduction Measures for India and Pakistan*, by (name redacted); Rajesh Basrur and Hasan Askari-Rizvi, "Nuclear Terrorism and South Asia," Cooperative Monitoring Center Occasional Paper 25, Sandia National Laboratories, Albuquerque, NM, February 2003; and Graham Allison, "Tick, Tick, Tick," *Atlantic Monthly*, October 2004.

¹³⁴ "First or Second Class?" *Friday Times* (Lahore), October 15, 2004.

¹³⁵ Amir Mir, "About Turn." Rediff Specials, *Rediff.com*, October 17, 2001. [http://www.rediff.com/news/2001/oct/17spec.htm].

Musharraf also was said to have viewed Ahmad as overly ambitious and a potential rival for power within the military.¹³⁶

After Gen. Yusuf retired in October 2004, Musharraf named a close ally, Lt. Gen. Ahsan Salim Hayat, the Karachi Corps Commander, as the new VCOAS. Hayat narrowly escaped assassination in a bloody June 2004 attack on his motorcade, an event which appeared to confirm his status as an enemy of Islamic extremists. The newly-promoted four-star general is believed to be one of Musharraf's closest allies in the military and his most likely successor as Army Chief.¹³⁷ Musharraf also replaced ISI chief, Lt. Gen. Ehsan-ul Haq, who had overseen the removal of pro-Taliban officers from Pakistan's intelligence service after September 2001 with a relatively unknown officer, Lt. Gen. Ashfaq Kiani. Musharraf shifted Haq to the post of Chairman of the Joint Chiefs of Staff Committee, a less powerful position. Some speculate that the new VCOAS, Lt. Gen. Hayat, will exercise close supervision over the ISI and operations against Al Qaeda.¹³⁸

Policy Discussion: More Constraints Than Options¹³⁹

Despite Pakistani denials, considerable evidence suggests that Pakistan continues to be involved in the illegal acquisition of nuclear materials and technology to modernize its existing nuclear forces, and, at a minimum, allows the activities of nuclear supply networks on its territory. Such networks may still be involved in supplying nuclear materials, technology, and know-how to would-be nuclear states or even terrorist networks. In addition, Pakistan's nuclear arsenal and fissile material may be vulnerable to seizure in the event of a coup by dissident military officers or the seizure of power by radical Islamists with sympathy for terrorist groups. Moreover, if not carefully handled, U.S. policies aimed at strengthening Pakistan militarily could unintentionally upset current positive trends in Pakistan's relations with India that involve considerable political risk for both governments. Resolving or deferring a final settlement of the thus far intractable Kashmir dispute would greatly benefit both U.S. security counterterrorism and nonproliferation interests. Because this festering territorial dispute has led the countries to the brink of war on two occasions since both deployed nuclear weapons, any actions by the United States that would undermine the current atmosphere between New Delhi and Islamabad

¹³⁶ "After Musharraf, What?," *Outlook India* (Delhi), December 25, 2003

¹³⁷ "Pakistan's Musharraf Names Aides to Top Army Slots," Reuters News, October 2, 2004.; "Musharraf Keeps Army Post in Military Shake-Up," *Wall Street Journal*, October 4, 2004; "How the Indians are Viewing the Latest Pakistan Army Reshuffle," *South Asia Tribune*, October 5, 2004.

¹³⁸ B. Raman, "Pak Army Shuffle and After." *South Asia Analysis Group (SAAG)*, Paper no. 118, Oct. 4, 2004.

¹³⁹ This section was prepared by (name redacted) and Richard Cronin.

could possibly increase the risk of a conflict that would have the potential of escalating to a nuclear exchange.¹⁴⁰

Given that the reimposition of sanctions seems unlikely in the current situation, the Bush administration appears to be focusing on preventing the further spread of nuclear weapons capabilities to “rogue” states and terrorist groups. The Administration has emphasized improving the global community’s ability to interdict dangerous shipments through the Proliferation Security Initiative (PSI), and in shrinking access worldwide to capabilities needed to produce fissile material crucial for nuclear weapons. In a speech on February 11, 2004, President Bush proposed a mix of measures to respond to the threat of the nuclear black market. In addition to expanding interdiction efforts (under the PSI) to “shut down labs, to seize their materials, to freeze their assets,” the President also proposed criminalizing proliferation, expanding cooperative threat reduction measures to states like Libya; banning enrichment and reprocessing capabilities beyond those states that already have them; making the Additional Protocol (to the NPT) a prerequisite for nuclear-related imports; and creating a special committee at the International Atomic Energy Agency (IAEA) to investigate compliance.¹⁴¹

In June 2004, President Bush designated Pakistan as a Major Non-NATO Ally (MNNA) as provided for by Section 517 of the Foreign Assistance Act of 1961, as amended. Thailand, another important antiterrorism ally, was given the same status in 2003. The designation, long enjoyed by Japan, South Korea, Australia and other allies, makes Pakistan eligible for expedited access to excess defense articles and other privileges.¹⁴² The designation also appears related to Pakistan’s decision to purchase several major weapons systems. On November 16, 2004, the Department of Defense notified Congress of possible military sales to Pakistan of six Orion P-3C maritime patrol aircraft, 2,000 TOW-2A missiles, 14 TOW Fly-to-Buy missiles, six PHALANX Close-In Weapon Systems (CIWS), and an upgrade of six earlier models of the Phalanx shipboard anti-missile defense systems, along with associated equipment for all of the systems.¹⁴³

As if to underscore the possibility that U.S. arms sales to Pakistan could be destabilizing, Pakistan tested a Shaheen nuclear-capable short-range (700 kilometers) ballistic missile on December 8, 2004, on the same day that Secretary of Defense Rumsfeld arrived in New Delhi for meetings with Indian leaders where he was expected to discuss U.S. arms sales and military cooperation with India. Reportedly, one of the most important items on the Indian agenda was to acquire the U.S. Patriot ballistic missile defense systems (PAC-2 and/or PAC-3), and to explore the

¹⁴⁰ George Perkovich, “India and Pakistan on the Brink.” *The Wall Street Journal*, May 29, 2002. [<http://www.carnegieendowment.org/publications/index.cfm?fa=view&id=1023>].

¹⁴¹ Available at [<http://www.whitehouse.gov/news/releases/2004/02/20040211-4.html>].

¹⁴² “Title 3 — The President — Designation of the Islamic Republic of Pakistan as a Major Non-NATO Ally — Memorandum for the Secretary of State. *Federal Register*, June 29, 2004. Vol., 69, No. 124.

¹⁴³ Department of Defense Security Cooperation Agency, News Release, Nov. 16, 2004, Transmittal Numbers 05-05, 05-06, and 05-07.

possibility of obtaining approval to acquire Israel's Arrow battlefield missile defense system which includes U.S.-licensed components and technology. India reportedly expressed strong objections to the sale of the P-3C surveillance aircraft and the TOW anti-tank missiles.¹⁴⁴

Within the constraints imposed by dependence on antiterrorist cooperation from Pakistan, U.S. policymakers still may have several options for pursuing a stronger antiproliferation policy while maintaining Pakistan's status as a "front line" state in the war against terrorism. Possible approaches include:

Option 1 — De Facto Acceptance of Pakistan's Nuclear Activities and Non-Cooperation on the A.Q. Khan Issue on Condition of Maximum Counterterrorism Support

Although the United States may appear to have little choice but to support Musharraf, the degree of U.S. support matters greatly. One option, which appears to approximate current policy, is to provide large-scale economic and military support to Pakistan, conditioned only on satisfactory Pakistani cooperation against terrorism. The 9/11 Commission Report argues that President Musharraf is "the best hope for stability in Pakistan and Afghanistan" and an advocate of "enlightened moderation." The Commission recommends that "As the United States makes fresh commitments now, it should make promises that it is prepared to keep for years," provided "Pakistan's leaders are prepared to make difficult choices of their own."¹⁴⁵

The advantages of this course are that it reduces Pakistani suspicion that, in the words of the 9/11 Commission Report, the United States views Pakistan as an "ally of convenience." The underlying rationale for this option is that the more confidence that President Musharraf has in the U.S. commitment to Pakistan, the more ready he will be to confront terrorism.

For several reasons the nonproliferation benefits of this option appear few, while the risks may be high. This option does not fully address the limits of Musharraf's authority in regard to antiterrorist cooperation with the United States and it limits Pakistan's "hard choices" to the fight against extremists," not its nuclear behavior. Despite its strong support for the Musharraf government, the Bush Administration has not yet obtained full Pakistani cooperation against Al Qaeda and the Taliban. If Musharraf should adopt a zero-tolerance policy of shutting down all terrorist networks he risks a possibly fatal backlash from extreme nationalist and Islamist elements of the military and militants carrying out an insurgency in Indian-occupied Kashmir, as well as the loss of support from his current political allies among the Islamist parties.

¹⁴⁴ "Another Pak Missile Test." The Statesman (India): Briefs, Dec. 9, 2004. "U.S. Could Sell Arms to India and Pakistan." Forecast International/Missile Forecast, *Forecast International Defense Newsletters*, Dec. 8, 2004.

¹⁴⁵ *9/11 Commission Report*, p. 369.

Even if Musharraf or a similarly moderate military successor continues to maintain political dominance for the next few years, there is no absolute guarantee that Pakistan will continue its “front line” status against the Taliban and Al Qaeda. Much could depend on Pakistan’s volatile political situation. Already, Islamist political forces are impatient with Musharraf’s vision of a moderate, modernizing Islamic state and measures, however incomplete to suppress domestic *jihadists* in Baluchistan and the Northwest Frontier Province, and terrorist groups operating in Kashmir.

Even now, some in the Pakistani hierarchy are not prepared to support U.S. policy to the point of compromising, in their view, Pakistan’s long-term fundamental interests. Some analysts judge it unlikely that the ISI would ever completely alienate the Taliban. Evidence that more than one assassination attempt against Musharraf involved collusion between radical Islamists, possibly Al Qaeda operatives, and lower level Pakistani Air Force personnel, underscores that the military continues to be susceptible to ideological fissures. Radical political change may be unlikely under present circumstances, but a violent Islamist campaign against the government or an internal coup cannot be completely ruled out.

Questions about Musharraf’s ability to control events appear to be underscored by rumors in late 2004 and early 2005 that he has been engaged in secret negotiations on a power sharing agreement with the leaders of the two previous governing parties, the Pakistan People’s Party (PPP) led by Benazir Bhutto and the Pakistan Muslim League (PML), led by Nawaz Sharif. Under one rumored deal, Musharraf would remain President at least until 2007, but he would give up his position as Chief of the Army Staff, a move also demanded by his current MMA allies, and hold fresh parliamentary elections in 2005. Both Bhutto and Sharif had alternated as civilian prime ministers during the 1990s, but both had been overthrown by military coups and both are now in exile.¹⁴⁶ While such a development would likely be viewed as a positive step towards democratization, a decision by Musharraf to end his alliance with the MMA could provoke a new political crisis. Moreover, the very fact that the arrangement has been rumored raises questions about Pakistan’s stability.

At the same time, questions remain about Pakistan’s nuclear policies. The U.S. Government cannot verify the Musharraf government’s assurances that A.Q. Khan’s nuclear sales were not state policy and would not be repeated. Moreover, although Pakistan firmly ruled out any limits on its vertical proliferation activities, i.e., building more nuclear weapons and deploying more capable ballistic missiles, Humayun Khan’s acquisition of U.S. technology in collaboration with the South African arms dealer, Asher Karni, appears to belie this claim. Some of these illegal exports of U.S. technology took place as recently as August 2003.¹⁴⁷ No matter what the United States does at this point it will have to live with consequences of

¹⁴⁶ “ISI on Musharraf Benazir, Sharif Power-Sharing Deal.” *Hindustan Times*, Dec. 5, 2004.

¹⁴⁷ Jacob Blackford, “Asher Karni Case Shows Weaknesses in Nuclear Export Controls.” September 2004. ISIS-Online. [<http://www.isis-online.org/publications/southafrica/asher-karni.html>].

Pakistan's successful acquisition of nuclear weapons and the potential fragility of the stability and moderation offered by Musharraf.

In terms of unilateral options that do not directly undercut U.S.-Pakistani cooperation against terrorism, one U.S. official has said that ultimately the first and best line of defense as regards U.S.-source technology is the vigilance and cooperation of U.S. companies that sell sensitive technology. Reportedly, a French company refused to sell triggered spark gaps to Karni because he did not have a U.S. export license.¹⁴⁸ It appears that the discovery of Karni's activities occurred only by luck and the vigilance of one company, whereas earlier purchases of sensitive technology had been delivered.

For instance, the United States could further increase its assistance to and intelligence and law enforcement cooperation with South Africa, currently a country with weak enforcement of its stringent laws against the export of dual-use technology to non-NSG countries. Should South Africa continue to demonstrate weak enforcement of its laws against the unlicensed exports of nuclear-related technology, the U.S. government could unilaterally suspend South Africa's privileges as a member of the Nuclear Suppliers Group to import sensitive U.S. technology without an export license. It is likely, however, that such a move would be opposed by some NSG countries, if for no other reason than that their own enforcement of export controls may have weaknesses.

Option 2 — Emphasize Multilateral Nonproliferation Strategies

This approach, recommended in the 9/11 report, involves concentrating on the recipient or end-user side of the equation as the most effective way to deny nuclear weapons and materials to terrorists. That is, it emphasized measures to seek to close off global supply networks rather than penalizing Pakistan or even demanding a full account of A.Q. Khan's activities and networks.

Proliferation Security Initiative. As noted above, the Bush administration appears to be focusing on improving the global community's ability to interdict dangerous shipments through the Proliferation Security Initiative (PSI) and in shrinking access worldwide to capabilities needed to produce fissile material crucial for nuclear weapons. In a speech on February 11, 2004, President Bush proposed a mix of measures to respond to the threat of the nuclear black market.¹⁴⁹ The President has proposed expanding interdiction efforts under the PSI, which aims to "shut down labs, to seize their materials, [and] to freeze their assets." The multi-national agreement was announced by President Bush in May 2003 and inaugurated in Paris, in September 2003, by the United States, eight European NATO allies, Australia and Japan. Additional countries have joined since. Undersecretary of State John Bolton has described the initiative, which now enjoys the support of some 60 or more

¹⁴⁸ *Ibid.*

¹⁴⁹ Available at [<http://www.whitehouse.gov/news/releases/2004/02/20040211-4.html>].

countries, as “foremost among President Bush’s efforts to stop WMD proliferation.”¹⁵⁰

The 9/11 Commission recommended expanding the PSI, including persuading Russia and China to join, and providing participating member countries with NATO alliance “intelligence and planning resources.”¹⁵¹ It is probably crucial to include Russia and China to make the PSI effective, but it will also be important to include, where possible, supplier states. While it is doubtful that Iran or North Korea would agree to restrictions, making sure that Pakistan no longer engages in proliferation activities would appear critical to the effectiveness of the PSI. From this perspective, critics charge that it is past time that Pakistan reinforced its promises with concrete measures.

Proliferation specialists have welcomed the PSI but say that its potential is limited by several factors, including its “ad hoc” nature, which depends on the political will of participating countries. Some critics view the PSI as a supplement to a more robust nonproliferation regime and one which needs to be bolstered by changes in international law. This includes adopting amendments to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (1988), and the adoption of a U.N. resolution that would provide for interdiction activities under Section VII of the U.N. Charter, which allows the Security Council to authorize sanctions or the use of force to compel states to comply with its resolutions.¹⁵²

Strengthened International Regimes. U.N. Security Council Resolution 1540, of April 28, 2004, which is based on a U.S. draft, requires all states to adopt laws against the transfers of chemical, biological or nuclear weapons and as well as delivery systems and related technology, and to report by October 28, 2004, “on efforts to review their domestic laws and regulations, and to demonstrate that action was being taken to comply with the Resolution.” The resolution explicitly bans states from providing any proliferation help to non-state actors.¹⁵³ The resolution was adopted under Section VII of the U.N. Charter, and is thus binding on all member states. The resolution requires states to report on the measures they have taken to tighten their export controls. Although the resolution makes no mention of the right

¹⁵⁰ See CRS Report RS21881, *Proliferation Security Initiative (PSI)*, by (name redacted).

¹⁵¹ *9/11 Report*, op. cit., p. 398.

¹⁵² Joseph Cirincione, “The Bush Administration and Non-Proliferation: A New Strategy Emerges.” Testimony before the House International Relations Committee, March 30, 2004. [Carnegie Endowment for International Peace] [http://www.ceip.org/files/publications/pub_by_date.asp?p=8].

¹⁵³ Alistair Miller and Morten Bremer Maerli, “Nuclear Non-Proliferation and the United Nations Security Council Resolution 1540,” in *Policy Briefs on the Implementation of the Treaty on the Non-Proliferation of Nuclear Weapons*. Norwegian Institute of International Affairs, April 2005; CRS Report RL30033, “Arms Control and Nonproliferation Activities: A Catalog of Recent Events.” Updated January 7, 2005. [(name redacted), Coordinator.]

of interdiction or penalties for non-compliance, it can be viewed as establishing a legal basis for the use of interdiction or sanctions if other means have failed.¹⁵⁴

It may be possible to ban the further spread of enrichment and reprocessing capabilities without a new treaty such as a fissile material production cutoff treaty (FMCT), but new voluntary agreements remain difficult to enforce. The international community is already working on making the Additional Protocol (to full-scope nuclear safeguards agreements) a prerequisite for nuclear imports through the Nuclear Suppliers Group, but Pakistan is not a member of the NSG. Finally, for political reasons, it is unlikely that the IAEA will create a special committee for compliance, although Director General ElBaradei has set up a study group to evaluate several recommendations that have emerged as a result of the exposure of the Khan network.

In testimony before Congress one non-official witness deemed that efforts to combat nuclear proliferation remained the “stunted pillar” of the President’s National Strategy to Combat Weapons of Mass Destruction. The witness, Joseph Cirincione of the Carnegie Endowment for International Peace, compared FY2004 funding for non-proliferation programs at less than \$2 billion, with \$41 billion for Homeland Security and \$81 billion for military counter-proliferation efforts, including ballistic missile defense and the war in Iraq.¹⁵⁵

Effectively shutting down the black market trade in nuclear technology, materials, and components may be possible with adequate cooperation from host governments, but this objective would be easier to accomplish if Pakistan would provide access to A.Q. Khan or otherwise provide more information on the extent of his network. Iran’s current defiance of the IAEA and the U.N. Security Council also underscores the limitations of multilateral approaches to countries with sufficient financial and technological resources, and significant reverse leverage.

Expanded Cooperative Threat Reduction (CTR) Program. Even if Pakistan agreed, which is most unlikely under current circumstances, expanding to Pakistan the Nunn-Lugar Cooperative Threat Reduction Program, currently focused on Russia and countries of the former Soviet Union, could be difficult for several reasons. Significant barriers to assistance include U.S. domestic and international legal and political restrictions on cooperation with states outside the Nuclear Nonproliferation Treaty (NPT); the low level of transparency exhibited by Pakistan; lack of incentives for Pakistan to pursue threat reduction measures; and potentially competing objectives of threat reduction and nuclear deterrence vis-a-vis India. In fact, Pakistan has made it clear that although it is willing to cooperate on denying nuclear-related technology to terrorist groups, it has every intention to modernize and

¹⁵⁴ Alistair Miller and Morten Bremer Maerli, “Nuclear Non-Proliferation and the United Nations Security Council Resolution 1540,” in *Policy Briefs on the Implementation of the Treaty on the Non-Proliferation of Nuclear Weapons*. Norwegian Institute of International Affairs, April 2005, p. 36-40; CRS Report RL30033, “Arms Control and Nonproliferation Activities: A Catalog of Recent Events.” Updated January 7, 2005. [(name redacted), Coordinator.] p. 63.

¹⁵⁵ *Ibid.*

expand its own nuclear forces. Apparently, as the Asher Karni-Humayun Khan ring shows, Pakistan is committed to improving the capabilities of its nuclear weapons even to the point of violating U.S. export laws to obtain controlled technology.¹⁵⁶

Option 3 — Condition High Value Assistance on Access to A.Q. Khan

Some argue that the United States should not provide Pakistan with high value military hardware without dramatically improved cooperation on the A.Q. Khan case and other activities linking Pakistan to nuclear proliferation. The United States might insist on the following actions by Pakistan as a price for obtaining valued military equipment, especially weapons systems that are not directly related to counterterrorism cooperation, such as F-16 aircraft, anti-tank weapons, and other weapons systems that Pakistan is seeking to upgrade its military forces and offset or qualitatively exceed the capabilities of Indian weapons. This option could also include longer-term waiver authority on U.S. nuclear and missile proliferation sanctions beyond the current year-to-year extensions in appropriations bills. This option could require Pakistan's agreement to:

- full cooperation on A.Q. Khan's network,
- full cooperation also regarding the Asher Karni-Humayun Khan network,
- strict observance of U.S. export control laws by the government of Pakistan, the Pakistani military, and any third party intermediaries,
- absolute commitment on no future transfers of nuclear or missile technology, and
- no new nuclear tests and restraint on nuclear and missile competition with India

Key Rationale. A key rationale for this option is that providing Pakistan with such high value weapons systems is only warranted if the benefits exceed the cost. In this case, the cost to the United States is not just the dollar value of the weapons systems but also the inevitable complications for relations with India, a country with which the United States also has developed a *de facto* strategic relationship, even if New Delhi is also allowed access to coveted U.S. defense technology, as now seems likely. The record of the past half century shows that India will seek to match every increase in Pakistan's military capability (and vice-versa). One of the most problematical aspects of selling F-16s to Pakistan is that, in the words of one study, "The F-16 could be Pakistan's primary nuclear-capable aircraft, capable of delivering a 1,000-kilogram bomb to a distance of 1,400 kilometers."¹⁵⁷ A key question that

¹⁵⁶ For more details, see CRS Report RL31589, *Nuclear Threat Reduction Measures for India and Pakistan*, by (name redacted).

¹⁵⁷ Federation of American Scientists WMD Around the World series: "Pakistan Nuclear Weapons: A Brief History of Pakistan's Nuclear Program." [<http://www.fas.org/nuke/guide/pakistan/nuke/>]. Original source Federation of American Sciences website: Joseph Cirincione with Jon B. Wolfsthal and Miriam Rajkumar, *Deadly Arsenals: Tracking Weapons of Mass Destruction*. Carnegie Endowment for International (continued...)

Congress may wish to consider is whether the United States is paying too high a price, including a cost to its foreign policy interest in a stable and peaceful India-Pakistan relationship, for what it is getting from Pakistan.¹⁵⁸

Potentially Risky Test of Wills. A potentially significant problem with this option is that so long as Islamabad perceives that the Bush Administration needs it more than Pakistan needs the United States, Musharraf or a successor is in a position to turn the tables on U.S. policymakers. That is, instead of treating the F-16s or other weapons systems as a “carrot,” to be earned by additional cooperation, Pakistan could reduce or limit its cooperation on terrorism as a lever to get the United States to agree to allow the purchase of the aircraft and other desired hardware. In fact, some of President Musharraf’s remarks at a press conference during a visit to Washington in early December 2004 — several months before the Administration announced its willingness to approve the sale of the F-16s — could be interpreted as effort to put counter-pressure on the United States. Musharraf told reporters that he had discussed the F-16 issue with President Bush and senior U.S. officials, but that the Administration had not yet agreed to the requested purchase. At the same time, Musharraf also implied declining enthusiasm for using Pakistani forces to hunt for Al Qaeda in tribal zone between Pakistan and Afghanistan, where many believe bin Laden and other senior terrorist leaders may be hiding. He reportedly criticized the U.S. invasion of Iraq and said that the trail of Osama bin Laden had gone cold, “in large part” because of a decline in operations by U.S. forces in Afghanistan and delays in the training of Afghan forces¹⁵⁹

Although using the offer to sell F-16s to Pakistan as leverage to gain more cooperation regarding A.Q. Khan’s network or other objectives could backfire, Musharraf’s domestic political vulnerabilities noted above might give the United States the upper hand in any test of wills. Moreover, conditioning the sale of F-16s on better responsiveness by Pakistan to U.S. nuclear nonproliferation concerns may be the least risky of the options that involve putting pressure on Pakistan, but the viability of this option depends on many factors that are outside U.S. control, and even that of Musharraf. Because of his somewhat precarious domestic political system, any attempt to achieve a quid-pro-quo would appear to have the best prospects of success if done in secrecy.

F-16 Fighter Aircraft Sale and the India-Pakistan Confrontation. On March 25, 2005, at a State Department press briefing, unnamed senior officials announced that Pakistan would be allowed to buy an unspecified number of F-16s. The officials also announced that the prime contractors on both the F-16 and the F-18 fighters, General Dynamics and McDonnell Douglas respectively, would be allowed to bid on an expected Indian contract for a new multi-role combat aircraft. The

¹⁵⁷ (...continued)

Peace, 2002. Chapter 12,” Pakistan.”

¹⁵⁸ See CRS Report RS22148, “Combat Aircraft Sales to South Asia: Potential Implications.” May 19, 2005 [by (name redacted) , (name redacted), and (name redacted).]

¹⁵⁹ “Bin Laden’s Trail Gone cold: Musharraf.” *Agence France Presse*, Dec. 5, 2004; 17:04.

announcement followed a March 2005 trip to six Asian countries, starting with India and Pakistan, by Secretary of State Condoleezza Rice and, according to an unnamed State Department briefer, “months of thinking through American Strategy towards South Asia.”

The briefer designated by the ground rules as “senior official one” placed the possible sale of combat aircraft to India in the context of “a new framework of cooperation,” which might also include the sale of ballistic missile defense technology and even cooperation on nuclear energy. In response to questions from the press, the briefer denied that the sale of F-16s to Pakistan would be destabilizing, arguing that while the numbers of aircraft provided to Pakistan would be relatively small, perhaps in the neighborhood of 25, the Indian government was contemplating a very large scale purchase.¹⁶⁰

Whether the Administration’s decision to approve the request might be the result of a successful strategy to gain more cooperation on A.Q. Khan’s network and Al Qaeda cannot be determined from open sources. Should there be a link to Pakistan’s new cooperation with the IAEA, some critics of the Administration’s handling of Pakistan’s nuclear activities may question the value of the tradeoff. When a questioner at the March 25, 2005 press briefing commented that the announcement came shortly after Pakistan announced that it would allow IAEA inspectors to look at some “nuclear parts”¹⁶¹ to aid its investigation of Iran’s nuclear program, the State Department briefer responded that “We don’t want to get into the details of our diplomatic discussions with Pakistan on this very sensitive issue.” The briefer added, however, that “What we can say is that the A.Q. Khan issue has obviously been an issue the Secretary has been working on very hard and she did discuss it during her trip with the Pakistani government and we feel like the Pakistani government is offering good cooperation on this front to address the understandable concerns we have.”¹⁶²

Congressional Role and Powers. Congress itself has the power under the Arms Export Control Act to block an arms sale by passing a joint resolution or other legislation with a sufficient margin (i.e., two-thirds or more) to overcome a Presidential veto. The fact that the Administration has announced its intent to resume sales of F-16s to Pakistan does not affect Congress’ powers. As of mid-May 2005, the Administration had not submitted a required formal notification of the intent to sell the aircraft. Customarily the Defense Department notifies Congress informally of its intent to carry out an arms sale, but because Pakistan was designated

¹⁶⁰ “U.S. Department of State, Office of the Spokesman, “Background Briefing by Administration Officials on U.S.-South Asian Relations. March 25, 2005.

¹⁶¹ The reference was to the IAEA’s request for centrifuge parts that could be used to determine if radiation contamination on Iranian centrifuge parts held by the IAEA could be matched with the Pakistani parts. On March 30, 2005, the English language Pakistani newspaper *Dawn* reported that Pakistan’s foreign minister had stated the previous day that Pakistan would send some “out-of-date pieces of centrifuges” to Geneva for testing, but that the parts would remain in Pakistani custody and eventually returned to Pakistan.

¹⁶² “U.S. Department of State, Office of the Spokesman, “Background Briefing by Administration Officials on U.S.-South Asian Relations.” March 25, 2005.

a non-NATO ally in June 2004, Congress would have only 15 calendar days following the formal submission of a notification to block a sale.¹⁶³

A refusal by Congress to allow the F-16 sale to go forward would have significant, but unpredictable and almost certainly negative impact on U.S.-Pakistan relations. Consequently, should Members of Congress wish to block the sale or attach conditions with the least negative consequences for U.S.-Pakistan cooperation against terrorism, they may wish to seek a behind-the-scenes dialogue with the Administration, or otherwise make their views known prior to the receipt by Congress of a formal notification of intent to sell the aircraft. Whether the Administration would be willing to engage with Congress on this issue would likely depend significantly on the nature and strength of opposition to current policy.

Option 4 — Reimposition of Nuclear Nonproliferation Sanctions

For reasons noted above, neither Congress as a whole nor the Administration have shown any interest in reimposing economic and military assistance and arms transfer sanctions in response to Pakistan's nuclear proliferation activities, apart from expanding the scope of existing law to include terrorist acts or threats involving weapons of mass destruction (WMD). Sections 6801, 6802, and 6803 of P.L. 108-458 (S. 2845), the Intelligence Reform and Terrorism Protection Act of 2004, amend provisions of the Atomic Energy Act of 1954 and other laws to expand their scope by adding penalties for the participation of individuals, either inside or outside the United States, in "the development or production of any special nuclear material," or terrorist threats of the use of WMD.¹⁶⁴ In the 109th Congress, H.R. 1553 (see legislation section, below) would condition U.S. military assistance, arms sales, transfers, and licenses on unrestricted access to A.Q. Khan and full compliance by Pakistan with U.S. and IAEA requests for information about his network. This proposed legislation has received no action as of mid-2005.

Either the President or Congress could reimpose sanctions on Pakistan. In the case of the President, he could decline to use his general authority under Section 614 of the Foreign Assistance Act, which gives the President broad powers to waive, subject to consultation with Congress, nonproliferation sections of the Foreign Assistance Act that would otherwise apply to Pakistan. He could also decline to use waiver authority provided annually in successive foreign operations appropriation acts since 2001 to waive provisions of appropriations acts that forbid assistance to countries in default of their debt repayments or whose democratic government has been overthrown in a military coup.

Congress also has the power to block the President's use of waiver authority under Section 614 of the FAA and other legislation. Additionally, Congress could decline to renew the annual foreign operations appropriations authority to waive the

¹⁶³ For detailed information on the role of Congress in arms sales see CRS Report RL31675, *Arms Sales: Congressional Review Process*, by (name redacted).

¹⁶⁴ These sections add a new Section 832 to Title 16, Part I, Chapter 39.

ban on aid to countries that are in default on their debts or have governments that took power by military coups. Congress could also condition U.S. aid to Pakistan on specific requirements such as full cooperation by the Musharraf government in efforts to learn the full extent of A.Q. Khan's network. Under present circumstances the President could be expected to resist strongly any effort to constrain his freedom of action regarding Pakistan, both on policy grounds and the defense of executive branch authority.

Legislation

Section 2235 (“Extension of Pakistan Waivers”) of S. 600, “The Foreign Affairs Authorization Act, Fiscal Years 2006 and 2007,” reported to the Senate May 26, 2005 (S.Rept. 109-35), includes a subsection (b) that would (1) renew the current authority of the President to waive for FY2006 the application in Pakistan's case of current law providing for sanctions on “any country whose duly elected head of government was deposed by decree or military coup, if the President determines and certifies to the appropriate congressional committees that such waiver — (A) would facilitate the transition to democratic rule in Pakistan ; and (B) is important to United States efforts to respond to, deter, or prevent acts of international terrorism.” Subsection (b) would extend the current exemption of Pakistan from the application of provisions of foreign assistance law regarding foreign country loan defaults.

Section 2236 of S. 600, “The Foreign Affairs Authorization Act, Fiscal Years 2006 and 2007,” would amend the Foreign Relations Authorization Act of FY2003 to modify an existing reporting requirement added in 1992 to require a report to be submitted to Congress no later than April 1, 2006, as pursuant to Section 620F of the Foreign Assistance Act of 1961, amended, that “shall include a description of the efforts of the United States Government to achieve the objectives described in subsections (a) and (b), the progress made toward achieving such objectives, and the likelihood that such objectives will be achieved by September 30, 2006.”¹⁶⁵

S. 12, “Targeting Terrorists More Effectively Act of 2005,” introduced on January 24, 2005, and referred to the Committee on Foreign Relations, would authorize a total of \$797 in economic and military assistance to Pakistan, subject to conditions. Section 232(d) of Subtitle D — “Strategy for the United States Relationship With Afghanistan, Pakistan, and Saudi Arabia,” would bar military and economic aid to Pakistan “unless the President submits to Congress for such fiscal year a certification that no military or economic assistance provided by the United

¹⁶⁵ Subsection (a) of Section 620F of the Foreign Assistance Act of 1961, amended, contains a set of nine “findings” regarding the threat of nuclear proliferation in South Asia. Subsection (b) added by the same legislation consists of a “Sense of the Congress” statement that “the President should pursue a policy which seeks a negotiated solution to the issue of nuclear non-proliferation in South Asia at the earliest possible time....” Added by Sec. 585(a) of P.L. 102-391, the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1993, October 10, 1992.

States to the Government of Pakistan will be provided, either directly or indirectly, to a person that is opposing or undermining the efforts of the United States Government to halt the proliferation of nuclear weapons.” Congress has not passed a foreign assistance authorization bill since 1985, but proposed amendments to the FAA contained in uncompleted authorization bills sometimes are incorporated into the annual appropriations bill for foreign operations.

H.R. 1553, “The Pakistan Proliferation Accountability Act of 2005,” introduced and referred to the House International Relations Committee on April 12, 2005, would prohibit military assistance, military sales, transfers or licenses, until the fulfillment of several requirements. These include the requirements that the Pakistani government provides unrestricted access to A.Q. Khan, complies fully with requests by the IAEA for assistance in discovering the full extent of Khan’s activities, and the U.S. Government has “determined the nature and extent of the illegal international proliferation network’s connection to Al Qaeda and Osama bin Laden,” and in conjunction with the IAEA has confirmed that complete dismantlement of Khan’s network.

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