



# 2008-2009 Presidential Transition: National Security Considerations and Options

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## Summary

A presidential transition is a unique time in America and holds the promise of opportunity, as well as a possible risk to the nation's security interests. The 2008-2009 election marks the first presidential transition in the post-9/11 era, and is of concern to many national security observers. While changes in administration during U.S. involvement in national security related activities are not unique to the 2008-2009 election, many observers suggest that the current security climate and recent acts of terrorism by individuals wishing to influence national elections and change foreign policies portend a time of increased risk to the current presidential transition period. Whether the enemies of the United States choose to undertake action that may harm the nation's security interests during the 2008-2009 election, or the new President experiences a relatively peaceful period during the transition, many foreign and domestic policy and security challenges will await the new Administration. How the new President recognizes and responds to these challenges will depend heavily on the planning and learning that occurs prior to the inauguration. Actions can be taken by the outgoing President and President-elect that may ameliorate decision-making activities in the new administration. Whether an incident of national security significance occurs just before or soon after the presidential transition, the actions or inactions of the outgoing Administration may have a long-lasting effect on the new President's ability to effectively safeguard U.S. interests and may affect the legacy of the outgoing President.

This report discusses historical national-security related presidential transition activities, provides a representative sampling of national security issues the next administration may encounter, and offers considerations and options relevant to each of the five phases of the presidential transition period. Each phase has distinct challenges and opportunities for the incoming administration, the outgoing administration, and Congress. This report will be updated as needed.

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## Introduction

A presidential transition—the period from campaigning through placement of new administration personnel—is a unique time in American politics and holds the promise of opportunity as well as a real or perceived vulnerability<sup>1</sup> to our nation’s security interests. On a given day the outgoing administration has the ability to change the policies of a nation and possibly affect the international security environment, yet the following day the President and the national security leadership team are replaced by a new set of leaders who may have very different strategy and policy goals.<sup>2</sup> This political dynamic, coupled with the inherent uncertainty accompanying a presidential transfer of power, may provide a target of opportunity that may be too enticing to resist by those who wish to harm U.S. security interests. Unlike other man-made incidents that may occur with little warning, the presidential transition offers a broadly defined time frame in which an enemy of the United States<sup>3</sup> may decide to undertake an incident of national security significance<sup>4</sup> with the hope of manipulating the electoral process or changing the nation’s foreign and domestic policies.

Presidential transitions during times of U.S. involvement in military operations and national security-related activities<sup>5</sup> are not unique to the 2008-2009 presidential transition period (see **Appendix A**).<sup>6</sup> However, based on the current international security environment and recent

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<sup>1</sup> Throughout this report, numerous references are made to the nation’s increased “vulnerability” during times of presidential transition. Vulnerability is the manifestation of a potential threat to inflict harm to an area that is not properly defended, cannot be completely defended, or is indefensible. A better representation of the environment the U.S. may face during the presidential transition is the degree to which the nation is at “Risk”(R). (R) is the product of weighting and multiplying the Threat (T), Vulnerability (V), and Consequences (C) of an incident (TVC=R). (T)’s directed at the electoral process may become known by the federal intelligence community [or the federation of national intelligence activities.] The nation’s (V) to a national security-related incident may be increased or decreased based on the targets chosen by enemies of the United States. (C), however, could range from minor to significant based on the severity of an incident and its proximity to the five phases of the transition period.

<sup>2</sup> *The Law of Presidential Transitions*, Boston School of Law Working Paper, William P. Marshal and Jack M. Beerman, 2005. “The outgoing President retains all the formal legal powers of the presidency, yet his last electoral success is four years removed and his political capital is at low ebb. The outgoing President will want to protect his policies or accomplishments from being reversed or undermined and may also want to create obstacles to prevent his successor from too quickly achieving political and policy success. The incoming President, on the other hand, will be focused on beginning her own initiatives and may desire to expeditiously reverse the policies of the previous President.” When the incoming and outgoing Presidents are from opposing political parties the conflicts during the transition period may be even more acute.

<sup>3</sup> Enemies that pose a risk to the United States may emanate domestically and internationally and take the form of foreign and American citizens who are aligned with nation states, groups, or individuals that pledge allegiance or undertake action adverse to U.S. interests.

<sup>4</sup> While an incident of national security significance could entail a catastrophic natural disaster, this term, for purposes of this paper, is used to describe foreign and domestic security-related man-made acts, including a terrorist attack (in the United States, against interests overseas, or against an Ally), significant offensive action against troops deployed overseas, assassination of a U.S. or foreign leader, seizure of an embassy, a change in the political environment where the U.S. is undertaking stabilization activities, significant foreign power nuclear-related activity, or a foreign power or extremist group taking military action against an ally of the U.S.

<sup>5</sup> For purposes of this report, national security activities encompass all aspects of United States foreign and domestic policy and operations responsible for safeguarding national security interests.

<sup>6</sup> For purposes of this report the presidential transition period is comprised of five phases extending from presidential campaigning activities to the newly elected President’s formation of a national security team and production of accompanying strategies and policies. The five phases of the presidential transition period will be discussed later in this report.

attempts to disrupt transfers of power in other countries, many observers see the United States as lurching toward a period of uncertainty and increased risk (see **Appendix B**). While the mere presence of an upcoming presidential transition does not ensure an incident of national security significance will occur, security experts argue that this window of potential risk is not lost on the enemies of the United States. At present, the intelligence community assesses that “Al-Qaida will increase the frequency, sophistication, timeliness and Western targeting of its propaganda statements as the United States advances toward the presidential election.”<sup>7</sup> While many terrorism experts are concerned about the internal and external threats to the United States during the presidential transition period, the intelligence community is “uncertain what impact [terrorist propaganda] statements will have on the Western Muslim community and other individuals who are Al-Qaeda’s primary target audience.”<sup>8</sup>

According to a presidential transition-related report provided to the Department of Homeland Security (DHS) by the Homeland Security Advisory Committee (HSAC), “briefings, research, and recent history have provided an appreciation of the potential vulnerabilities during transition periods. Not only are we [United States] aware that vulnerabilities exist, but our enemies are as well.”<sup>9</sup> As observed by Frances Townsend, former Homeland Security and Counterterrorism Advisor to President George W. Bush,<sup>10</sup>

I worry about the period of vulnerability between the time we have nominees for each party through and just after the inauguration of a new President. I think that’s a particular period of vulnerability, because of what we know about Al Qaeda’s attempts to influence the elections in Spain. We’ve seen the attacks after (name redacted) took over as Prime Minister in the U.K. We see in the 2004 election where they were issuing videos days before the [United States] election, including bin Laden talking about the streets in the United States running with blood. We know from their history that Al Qaeda wants to influence elections and have political influence.

The executive branch is not alone in attempting to ensure the country passes power from one administration to the next in a safe and thoughtful manner.<sup>11</sup> However, the outgoing and incoming administrations are viewed as primarily responsible for addressing risks to the nation and taking actions to prevent and respond to any incident that may affect the electoral process. Whether the enemies of the United States choose to undertake action that may harm national security interests during this period of transition or the new President experiences a relative peaceful period shortly after entering office, many national security issues will be awaiting the new Administration. How the newly elected president recognizes and responds to these challenges will “depend heavily

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<sup>7</sup> “Al-Qaida’s 2007 Media Campaign, DHS-FBI Joint Homeland Security Assessment,” February 11, 2008, *Congressional Quarterly-Homeland Security*.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Report of the Administration Transition Task Force*, Homeland Security Advisory Council, January, 2008. [http://www.dhs.gov/xlibrary/assets/hsac\\_ATTFF\\_Report.pdf](http://www.dhs.gov/xlibrary/assets/hsac_ATTFF_Report.pdf).

<sup>10</sup> Frances Fragos Townsend, C-SPAN interview transcript, January 4, 2008. <http://www.c-span.org/special/Townsend.asp>.

<sup>11</sup> The U. S. Congress and state and local governments provide support to various aspects of the presidential transition. Other government and non-governmental entities that offer advice and assistance to presidential transition related activities include General Services Administration, National Archives, Office of Government Ethics, Congressional Research Service, Government Accountability Office, Center for the Study of the Presidency, Council for Excellence in Government, Mandate for Leadership Project, Presidential Appointment Initiative, Reason Public Policy Institute, and the Transition to Governing Project. The United States Presidential Transition, Senate Homeland Government Affairs Committee, last accessed 14 February, 2008. [http://www.senate.gov/~govt-aff/transitions/pta\\_page6.htm](http://www.senate.gov/~govt-aff/transitions/pta_page6.htm).

upon the planning and learning that takes place during the transition from one Administration to another.”<sup>12</sup> During recent presidential transitions,<sup>13</sup> the current and incoming administrations and Congress have traditionally undertaken numerous activities to facilitate a smooth transfer of executive branch power. Some of the actions often taken during presidential transitions include

- consulting with government and private sector experts who have presidential transition expertise,
- providing information to the President-elect after the election and prior to the inauguration,
- offering operational briefings on ongoing national security matters to prospective presidential nominees and their staff,
- preparing briefings books and policy memos detailing the issues of most concern to the current administration, and
- expediting security clearances for president-elect transition team members.

Other activities that the current and incoming administrations and Congress may wish to consider undertaking during the presidential transition period include

- undertaking public outreach efforts to discuss possible risks to the nation,
- involving the national security representatives of presidential hopefuls in all transition-related discussions,
- establishing joint advisory councils responsible for addressing all transition-related risks,
- requiring the Director of National Intelligence (DNI) to undertake efforts to support the nation’s awareness of risks,
- reflecting the national security priorities of the new Administration in the 2009 budget,
- passing the FY2009 appropriations without undue delay;
- quickly assigning newly elected and existing Members of Congress to committees focused on national security,

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<sup>12</sup> Perils of Presidential Transition, Glenn P. Hastedt and Anthony J. Eksterowicz, *Seton Hall Journal of Diplomacy and International Relations*, Winter/Spring 2001 edition, pp 67.

<sup>13</sup> President Harry S Truman is often credited with establishing the tradition of the outgoing President offering Administration transition-related assistance to the incoming Administration. He directed each agency leader to provide him a report on activities related to transitioning the new Administration into power. Shortly after the election of Dwight Eisenhower, President Truman invited him to a meeting at the White House to discuss, among other concerns, national security-related issues. Prior to President Truman’s actions and the subsequent enactment of the Presidential Transition Act of 1963, presidential transition activities rarely focused on substantive issues. The Presidential Transition Act of 1963 (P.L. 88-277) was enacted on March 7, 1964, and codified at 3 U.S.C. 102. For a more in-depth discussion of historical presidential transition processes and activities, see CRS Report RL30736, *Presidential Transitions*, by (name redacted).

- holding hearings comprised of national security experts to gather ideas on prospective U.S. national security policies and goals, and
- holding hearings soon after the inauguration of the new President to determine the Administration's national security-related priorities.

## National Security Issues the Next Administration Is Likely to Encounter

The next Administration is likely to face many national security challenges on taking office. Some security experts suggest that the presidential transition period of 2008-2009 may be unique given the quantity, diversity, and breadth of security risks confronting the nation. The incoming Administration is likely to face three distinct types of national security challenges that could translate into short- and long-term national security risks. For purposes of this report, the national security challenges the next administration might face include the following:

- **Current U.S. military engagements:** Iraq, Afghanistan, and other military support or training activities related to the global war on terrorism and counter-proliferation efforts.
- **Risks posed in countries and regions of concern:** Iran, North Korea, Russia, China, Republic of Serbia, Venezuela, Cuba, and the Middle East; and
- **Risks associated with contemporary issues:** the role of U.S. foreign policy in international security matters, the role of the military in nation-building activities and diplomatic endeavors, international terrorism, non-proliferation, and homeland security.

While the issues are not exhaustive and may not require the same level of attention and priority based on the new Administration's foreign and domestic security objectives, time devoted to understanding these and other challenges prior to the inauguration to may better prepare the newly elected President to make well-reasoned decisions on assuming office.

## The Presidential Transition Period

Many presidential historians argue that during the early days of the new Administration the knowledge and decision-making activities will, in part, be based on information provided by the outgoing Administration. With the presidential transition period running from the formal announcement of candidates for the office of the presidency to long past the inauguration,<sup>14</sup> members of the current Administration and potential incoming Administration may wish to initiate substantive transition activities in an efficient and productive manner as soon as possible.<sup>15</sup> Specifically, some scholars state that "enhanced cooperation and communication

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<sup>14</sup> Ibid. "After the inauguration, difficult situations can also arise when a new and untested Administration faces a sudden crisis and emergency."

<sup>15</sup> The Law of Presidential Transitions, Boston School of Law Working Paper, William P. Marshal and Jack M. Beerman, 2005. "For a number of reasons there is now a greater need than any time in our Nation's history for incoming and outgoing Administrations to work cooperatively during transitions periods. To begin with, government is (continued...)"

between the two Administrations is demanded by national security and foreign policy concerns.”<sup>16</sup> It is further observed that, “as the world becomes more dangerous and the risks to harm more immediate, the need for effective and seamless transitions becomes correspondingly greater.”<sup>17</sup> Thus, with respect to national security issues in particular, the need for outgoing and incoming Presidents to work together is no longer an option, but an unavoidable demand of the contemporary world.<sup>18</sup>

## Considerations and Options that Span the Presidential Transition Period

Throughout the entire presidential transition period, a number of national security-related concerns and opportunities may be presented to the incoming and outgoing administrations. Even under the best of circumstances, the sitting President and President-elect may encounter unexpected issues that can lead to decision-making perils. However, many observers argue that the national security-related collaborative efforts of the current administration and members of the potential new administration coupled with oversight activities throughout the transition period offer the nation the best hope of being prepared to recognize and respond to acts taken to disrupt the transfer of power or change U.S. policies. Congress may wish to request classified and unclassified hearings and reports regarding the Administration’s knowledge and efforts related to the following issues.

### Possible Actions by Entities Wishing to Disrupt the Presidential Transition Period

Threats to the 2008-2009 presidential election may be numerous with “dangers associated with the transition emanating both from within the homeland and internationally.”<sup>19</sup> Some national security observers are convinced that a terrorist group will take action against United States interests during the presidential transition period.<sup>20</sup> It is argued that enemies of the U.S. may see the nation as physically and politically vulnerable and that disseminating threatening propaganda or undertaking an incident of national security significance during the election period would likely result in a change in the election results or future policies. Statements or incidents may be undertaken with the desire to demonstrate a group’s ability to reestablish its status as an entity to be feared,<sup>21</sup> intimidate the voting public, suggest perceived weaknesses in a given candidate’s national security position,<sup>22</sup> change the results of the election, or change future U.S. policies.

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more complex and an incoming Administration faces an inestimable learning curve in assuming office and digesting the mounds of information necessary to be able to understand the powers at its disposal and govern effectively.”

<sup>16</sup> Todd J. Zywicki, *The Law of Presidential Transitions and the 2000 Election*, 2001 B.Y.U.L. Rev. 1573 (2001).

<sup>17</sup> Ibid.

<sup>18</sup> “The Law of Presidential Transitions,” *Boston School of Law Working Paper*, William P. Marshal and Jack M. Beerman, 2005.

<sup>19</sup> Robert Landers, “*Dangers in Presidential Transitions*,” Editorial Research reports, pp. 528-529.

<sup>20</sup> “Osama bin Laden is Planning Something for the U.S. Election-Interview of Steve Coll,” *Speigel Online*, Erich Follath, April 2, 2008. “I believe that he wants to influence America this time. There is a threat of the terrorist attack on American soil that al-Qaida has long warned of. Osama bin Laden is planning something for the U.S. election”

<sup>21</sup> “New Report tracks Relationship Between Al Qaeda and Jihadist Media,” *CQ Homeland Security*, Matt Korade, (continued...)



Many national security observers speculate that, if an incident of national security significance is to occur, enemies of the United States would prefer to take action just prior to the presidential election date. However, such acts at anytime during the presidential transition period could have desired and unintended effects on the presidential election and resulting policies.<sup>23</sup> Conversely, while many national security experts speculate that Al Qaeda, other extremist groups, and some foreign powers may see the presidential transition period as a desirable time to undertake action against U.S. interests, the mere fact that such activity occurs may not necessarily indicate that the act was committed with the desire to manipulate the results of the election. The timing of such acts may be solely based on the convergence of an entity attaining a desired capability with a perceived best opportunity to successfully complete its objective.

## Post 9/11 National Security-Focused Organizations

One factor complicating the 2008-2009 transition is the recent establishment of numerous new national security agencies with responsibilities for preventing future terrorist attacks or harms to U.S. interests.<sup>24</sup> These organizations have not undergone a presidential transition and may see many political appointees depart federal government service prior to the inauguration of the next President. Also, the organizations that existed during the last presidential transition and the new agencies may have employed many new personnel who are not well-versed in addressing matters of national security during times of presidential transition. Additionally organizations that pre-date the attacks of September 11, 2001, and that previously had national security responsibilities, may be asked to devote additional attention and resources to presidential transition-related issues.<sup>25</sup> Based on the length of time between the previous presidential transition, the departure of senior political and career officials, and the influx of new personnel addressing national security issues, it is possible that some federal agencies may not be properly anticipating the attention required or resources needed to support the incoming Administration's preparation and policy familiarization efforts.<sup>26</sup> Some security observers contend that if proper planning has not occurred

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April 4, 2008. In response to a question about al-Qaeda's troubles in maintaining support for its organization, panel members noted that the possible decline in followers coupled with the upcoming presidential election could be a potent mix for a group desperate to reassert its relevancy.

<sup>22</sup> "Kerry Says Bin Laden Tape Gave Bush a Lift," *New York Times*, Adam Nagourney, January 31, 2005. "Senator John Kerry said on Sunday that the attacks of Sept. 11 were the central deciding thing in his contest with President Bush and that the release of an Osama bin Laden videotape the weekend before Election Day had effectively erased any hope he had of victory."

<sup>23</sup> For example, while the terrorist attacks of March 2004 did appear to have an affect on the election outcome and the Spanish government's support of military actions in Iraq, the new Prime Minister actually increased Spain's commitment to counterterrorism military efforts in Afghanistan. It is speculated that while the tactical operation may have been a success, the long-term results of the attack were counter to the strategic desires of the terrorist group. It may also be worth noting that an incident occurring during the transition period may have a relatively short-term minor effect on a targeted country based in sound principle and engendering resilient societal behavior. While the short-term affects of an attack may change the outcome of an election or a current policies, the attack may have little long-term impact on a country's societal mores and desire for a customary transfer of national power.

<sup>24</sup> Examples of federal government organizations with significant national security responsibilities that were established post 9/11 include, the Homeland Security Council, the DHS, the Office of the Director of National Intelligence, and the National Counter Terrorism Center.

<sup>25</sup> "It's a Busy and Costly Presidential Election Cycle for the Secret Service," *CQ Homeland Security*, Rob Margetta, April 3, 2008.

<sup>26</sup> Examples of federal government organizations that could have current national security activities adversely affected by the need to assist incoming Administration transition efforts include the Department of Defense, the State (continued...)

efforts to support the incoming Administration may require personnel and resources to be transferred. This reallocation could detract from ongoing national security related activities and possibly place the nation at risk.

## COG and COOP Concerns

In May 2007, President Bush signed Presidential Directives focused on Continuity Of Government (COG) and Continuity of Operations (COOP) procedures during times of crisis.<sup>27</sup> Contained in these Directives was a provision describing the national essential functions that are to be continued to support the perseverance of the U.S. government during times of crisis. In recognizing the importance to plan for unforeseeable events that may effect the functioning of the nation, the Directives identified a need for a “cooperative effort among the executive, legislative, and judicial branches of the federal government to preserve the constitutional framework under which the Nation is governed and to execute constitutional responsibilities and provide for orderly succession, appropriate transition of leadership, and interoperability and support of the national essential functions during a catastrophic emergency.”<sup>28</sup> Some security observers contend that the outgoing and incoming Administrations may wish to coordinate closely throughout the presidential transition period on these two activities.

## Planning for the Unforeseen and Communicating Transition Related Information to the American Public

During previous presidential elections, some officials in the federal government have seen the need to address and plan for options that might be considered should the presidential election be delayed. While noting federal election dates are set by law requiring congressional action to change the current schedule, DeForest Soaries, former Chairperson of the United States Election Assistance Commission, wrote to then-DHS Secretary Ridge on June 25, 2004, that the process and procedures are undertaken in very different manners in the nation’s 8,000 voting jurisdictions. Chairperson Soaries stated that DHS and the federal interagency structure provide assistance to federal, state, and local government’s by collaborating on a plan to address voting options should a terrorist attack occur around the time of the election.<sup>29</sup> Many security experts argue that federal, state, and local election-contingency planning and coordination should occur

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Department, 16 intelligence community organizations, and the U.S. Secret Service—an organization within the DHS.

<sup>27</sup> The term Continuity Of Government is defined as “a coordinated effort within the federal government’s executive branch to ensure that national essential functions continue to be performed during a catastrophic emergency.” Continuity Of Operations is defined as “an effort within individual executive departments and agencies to ensure that Primary Mission-Essential Functions continue to be performed during a wide range of emergencies, including localized acts of nature, accidents, and technological or attack-related emergencies.” National Continuity Policy, jointly designated National Security Presidential Directive- 51 (NSPD-51) and Homeland Security Presidential Directive-20 (HSPD-20), May 9, 2007, White House website.

<sup>28</sup> Ibid.

<sup>29</sup> Jim Drinkard, “United States Has No Plan for Election Delay Due to Terrorism,” *USA Today*, July 12, 2004. Chairperson Soaries, in an subsequent interview, further stated that “each state must decide for itself what to do in the event of a disaster. When you have a national election, that has serious implications, because we don’t have a real national standard for what constitutes a disaster. What is a disaster in Alaska may not be a disaster in Alabama. And I think this discussion on a federal level will have to also involve state officials so that we have some national consensus and can offer national guidance on what we mean by a disaster.” *Countdown with Keith Olbermann*, Interview transcript, July 13, 2004.

during the early phases of the transition period. It is further suggested that, barring such discussions, the issuance of general guidelines, or a genuine effort toward collaboration, the prospects for electoral chaos might occur should an incident of national security significance take place just before or on the date of election.

During all phases of the presidential transition process, many national security experts suspect the federal government will receive information that heightens the risks to U.S. national security interests that may be, in part, based on activities by enemies of the United States attempting to influence the upcoming election.<sup>30</sup> Should such a heightened risk environment occur, some observers suggest that one of the best ways to meet this challenge is by a showing of national unity among the outgoing Administration and individuals vying for the presidency. To support a collegial and collaborative environment, the Homeland Security Advisory Council (HSAC) suggests the nominees issue a joint statement addressing potential threats to the nation or in response to an incident of national significance.<sup>31</sup> Some foreign policy experts suggest joint statements and activities by the current President and the prospective Presidents-elect take place with regularity to put forth a common voice to both the American public and the enemies of the United States that security issues will be addressed in a unified and coordinated manner.

Throughout the presidential transition period the federal government may wish to undertake outreach and education efforts directed at the American public. A public awareness campaign, led by the federal government, discussing a need for citizens to be more-vigilant during the election period and providing insight into what the federal government will do in the event of an incident prior to election day may provide confidence to a concerned voting public. Activities such as this may prove useful in preparing the voting public to be aware of the possibility of an incident of national security significance occurring during the presidential transition period and also may lower the anxiety of citizens planning on participating in the electoral process. With respect to security-related issues in the homeland, many observers argue that awareness on the part of the citizenry offers the best opportunity to provide indicators of anomalies that might be indicative of a group's preparation to undertake criminal activity to affect the presidential election process. To this degree, the DHS HSAC contends that continuous interaction with the media<sup>32</sup> and the public regarding potential threats during this time period will maximize the chances of having a nation prepared for harmful activities that may occur during any phase of the presidential transition. The DHS HSAC specifically opined:

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<sup>30</sup> See generally, "McCain Says Al Qaeda Might Try to Tip United States Election," *Reuters*, Steve Holland, March 14, 2008. When asked if he was concerned that anti-American militants in Iraq might ratchet up their activities to increase casualties in September or October and tip the November election against him, Senator McCain stated, "yes, I worry about it and I know they pay attention (to the election period) because of the intercepts we have of their communications."

<sup>31</sup> Report of the Administration Transition Task Force, Homeland Security Advisory Council, January, 2008. [http://www.dhs.gov/xlibrary/assets/hsac\\_ATTTF\\_Report.pdf](http://www.dhs.gov/xlibrary/assets/hsac_ATTTF_Report.pdf).

<sup>32</sup> It should be noted that numerous reports have been written about the al-Qaeda's use of the media to bring attention to the organization. Similarly, while directly related to the upcoming United States presidential transition, recently Major General John F. Kelly of the 1<sup>st</sup> Marine Expeditionary Force in Iraq stated that there are "indications that they (al-Qaeda in Iraq) may change their tactics and do some bigger events that capture the attention of the world through the media." Sara A. Carter, "United States General Warns of Bigger Attacks in Iraq," *Washington Times*, March 11, 2008. Many security observers suggest that a significant attack occurring on United States forces deployed overseas just before or after the election may be undertaken to influence the results of the election or test a new Administration's policies and response.

It is important that the American public become engaged in understanding the unique vulnerabilities posed by this transition period. This will require public education and media engagement during this critical period in our history. Before, during, and after the transition, the public must learn about the choices faced by the Nation, communities, families, and individuals. The public must become a partner with their government, sharing the burden. In addition, DHS should continue to engage the media as an ally in the timely dissemination of accurate and actionable information. DHS must work with the multiple messengers, trusted within diverse communities, to effectively communicate this information.<sup>33</sup>

The DHS has the responsibility to notify the American public of current or prospective threats to U.S. domestic security interests,<sup>34</sup> and the Department of State has the responsibility to alert U.S. citizens located overseas of security related concerns. Both organizations have numerous communication mechanisms to inform U.S. citizens and organizations regarding concerns related to the presidential transition period and, when required, to share threat information. Communication mechanisms for conveying information about the presidential transition period include:

- Department of Homeland Security: Official public announcements to the media, public service announcements, changes to the Homeland Security Advisory System, dissemination of information to state and local fusion centers and to private sector organizations, and posting information to DHS managed websites.
- Department of State: Official public announcements to the media, warden system alerts,<sup>35</sup> travel alerts, country specific warnings, country background notes, and posting information to State Department managed websites.

## Considerations and Options Unique to Each Phase of the Presidential Transition Period

Modern presidential transition activities are no longer constrained to the time between the election and inauguration.<sup>36</sup> Some presidential historians argue that, “history tells us that any winning candidate who has not started (transition efforts) at least six months before the election will be woefully behind come the day after the election day.”<sup>37</sup> While the time period and phases of a presidential transition are not statutorily derived, for purposes of this paper, the presidential transition period is comprised of five phases extending from presidential campaigning activities

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<sup>33</sup> *Report of the Administration Transition Task Force*, Homeland Security Advisory Council, January, 2008. [http://www.dhs.gov/xlibrary/assets/hsac\\_ATTf\\_Report.pdf](http://www.dhs.gov/xlibrary/assets/hsac_ATTf_Report.pdf).

<sup>34</sup> Section 203 of the Homeland Security Act of 2002 (6 U.S.C. 124), as amended by sec. 501(c)(1) of the Implementing the Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53, 6 U.S.C. 124), assigns the Secretary of DHS has “primary responsibility for providing warning regarding threats or risk from acts of terrorism in the homeland.” However, it is common for the FBI or DHS and the FBI to make a statement or disseminate a joint bulletin regarding security issues of concern.

<sup>35</sup> The Warden System allows Americans overseas to receive security warnings and other important notices as quickly as possible. Wardens are American citizens who will contact other Americans with relevant information from the embassy or the Department of State.

<sup>36</sup> “Perils of Presidential Transition”, Glenn P. Hastedt and Anthony J. Eksterowicz, *Seton Hall Journal of Diplomacy and International Relations*, Winter/Spring 2001 edition. “Transition efforts in modern presidential campaigns begin well before election day.”

<sup>37</sup> The IBM Center for The Business of Government Weblog, 2008 Presidential Transition Initiative, November 6, 2007. <http://transition2008.wordpress.com/>.

to the new President's establishment of a national security team and accompanying strategies and policies. Each phase identifies issues to consider by the outgoing and incoming Administrations and the Congress.<sup>38</sup> The phases of the presidential transition are as follows:

**Phase 1:** Campaigning by presidential candidates

**Phase 2:** Selection of party nominees

**Phase 3:** Election day

**Phase 4:** Post election day to prior to the inauguration

**Phase 5:** Presidential inauguration to formation of the new Administration's national security team and issuance of policy directives

### **Phase 1: Campaigning by Presidential Candidates**

Phase 1 of the presidential transition includes the time frame from campaigning by presidential hopefuls to the national political conventions that officially select the party nominees.<sup>39</sup> This period can last a few months to a year or longer depending on a number of factors, including the current President's desires and constitutional ability to run for re-election, the plans of individuals from the same party as that of the sitting President to challenge the President's re-election bid, and the opposing party's time frame for launching unofficial or official presidential nomination activities.

### ***Outgoing Administration Considerations and Options***

A number of activities can occur during the first phase of presidential transition activities that would benefit the incoming President and may prove useful toward providing continuity with respect to U.S. national security matters. As noted in the *Homeland Security Advisory Council Presidential Transition Report*, "it is important that DHS take action now to ensure a seamless and agile transition to new leadership and optimize the new leadership's ability to assume operational control of the Department."<sup>40</sup> Recommendations offered by the Advisory Council that could be undertaken during the first phase of the transition include

- clarifying the meaning of "heightened threat" during the transition period by notifying all homeland security partners of historical patterns;

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<sup>38</sup> Transitions in American government power are not reserved for the executive branch. Congressional elections and changes in state and local leadership are also occasions where individuals wishing to harm U.S. national security interests could place the nation at risk. While the focus of this paper is on security implications during a presidential transition, it is acknowledged that planning, prevention, preparedness, response, and recovery activities could also be hampered should an incident of national security concern occur during a congressional or non-federal government election period.

<sup>39</sup> The field of presidential hopefuls may be winnowed down during this process with individuals emerging as the de facto party nominee prior to being officially acknowledged as such by the represented political party. 26 USC section 9002 defines a major party as a political party whose candidate for the office of President in the preceding presidential election received 25 percent or more of the total number of popular votes received by all candidates for such office.

<sup>40</sup> *Report of the Administration Transition Task Force*, Homeland Security Advisory Council, January, 2008. [http://www.dhs.gov/xlibrary/assets/hsac\\_ATTF\\_Report.pdf](http://www.dhs.gov/xlibrary/assets/hsac_ATTF_Report.pdf).

- developing contingency plans around the homeland security themes of prevent, prepare, respond, and recover;
- providing prospective presidential nominees information regarding lessons learned from incidents occurring during previous leadership transitions; and
- offering operational briefings on ongoing national security matters to prospective presidential nominees and their staff.

The current Administration may wish to consider initiating information exchanges and collaborative efforts with the major party candidates in this, the earliest phase of the transition. Generally speaking, as the campaign for President progresses through the spring and leading up to the presidential conventions, relatively few leading candidates will emerge as viable contenders for gaining the nomination of a given political party. The current Administration could bring this relatively few number of individuals, and their designated senior national security staff, into briefings and discussions regarding national security issues that will likely be of concern to incoming Administrations. As stated by the former Homeland Security Advisor and Counterterrorism Advisor to President George W. Bush, “over the next 12 months the current Administration has a special obligation to have a far more robust transition plan in a post-9/11 world than we’ve ever seen before.”<sup>41</sup>

An issue of concern to some presidential transition observers is the turnover of personnel occupying key positions in the federal government. There are over 7,000 federal government leadership, management, and support positions that are non-competitively filled by political appointees.<sup>42</sup> Some observers suggest that many of the 7,000 positions have, as part of their primary function, national security responsibilities. Should large numbers of political appointees depart in the months preceding the inauguration, the federal government would likely rely on Senior Executive Service personnel, career diplomats, senior military officers, and senior general-schedule employees for continuity of operations, leadership, and management of most national security related activities. While the occupation of senior policy positions by career government employees may not necessarily be a problem, a number of considerations arise in such an environment.

Appointing career civil servants to mid- to high-level positions in federal departments and agencies has been offered by national security observers as a way to provide continuity during presidential transitions.<sup>43</sup> This action may allow agencies to operate without interruption and provide the new congressionally confirmed or presidentially appointed agency directors with in-house expertise and historical context about the organization. As a proponent of converting some of the federal government’s national security leadership positions to career civil servants, DHS Acting Deputy Secretary Schneider noted “it’s important to realize that major terrorist attacks, both here and abroad, are often launched shortly before or after national elections or

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<sup>41</sup> Frances Fragos Townsend, C-SPAN interview transcript, January 4, 2008.

<http://www.c-span.org/special/Townsend.asp>.

<sup>42</sup> *Policy and Supporting Postings*, Committee on Government Reform, 108<sup>th</sup> Congress, 2<sup>nd</sup> Session, November 22, 2004. This report, popularly referred to as “The Plum Book,” lists by title, type of appointment, level of position, and, if known, the name of the individual occupying the position for all non-competitive appointees who are serving during a specific Administration. The report is produced during the first year of a new Administration.

[http://a257.g.akamaitech.net/7/257/2422/05jan20051520/www.gpoaccess.gov/plumbook/2004/2004\\_plum\\_book.pdf](http://a257.g.akamaitech.net/7/257/2422/05jan20051520/www.gpoaccess.gov/plumbook/2004/2004_plum_book.pdf).

<sup>43</sup> For example see, “Rossides Set to take TSA Into the Next Administration,” Rob Margetta, *Congressional Quarterly-Homeland Security*, January 18, 2007.

inaugurations. By promoting dedicated civil servants who've proven their mettle, we're not only building for the future, but are helping ensure that during the transition, as the perceived weakness grows, our Department is prepared."<sup>44</sup> While the promotion of civil servants into federal agency deputy positions is welcomed by many national security observers, others are concerned with the selection process that supports this activity. Some are concerned that the individuals chosen for these positions are being selected by the current Administration's political leadership and that this may be a way for individuals with like-minded political philosophies to maintain control over an agency and pursue policies that are counter to a new Administration.<sup>45</sup>

### *Possible Role of National Security and Homeland Security Councils*

The National Security Council (NSC) is the President's "principal forum for considering national security and foreign policy matters with senior national security advisors and cabinet officials,"<sup>46</sup> whereas as the Homeland Security Council's (HSC) purpose is to "ensure coordination of all homeland security-related activities among executive departments and agencies, and to promote the effective development and implementation of all homeland security policies."<sup>47</sup> The current Administration might consider establishing a joint advisory council that draws on the expertise and experience of both the NSC and HSC to assist with transition issues. This new body could be comprised of political and career staff from the NSC and HSC, outside experts with transition expertise, and members of the prospective president-elects national security team. Organizational responsibilities could include coordinating the presidential transition policies of agencies having national security missions. In assisting the transition process, the entity could attempt to ensure presidential transition period activities are coordinated in an interagency manner and are cognizant of the effects current efforts may have on a new Administration. If so desired by the President-elect, this organization could continue for a period of time into the next Administration. The council could have responsibility for advising the outgoing and incoming Presidents on possible policy implications of national security decisions made and actions taken during all phases of the presidential transition.

### *Office of the Director of National Intelligence*

The Office of the Director of National Intelligence (ODNI) is responsible for assessing and reporting on risks to the Nation and has many organizations that directly or indirectly provide analytical and operational support to the President and senior members of the national security community. The following options are activities that the DNI could undertake to facilitate the federal government's understanding and ability to respond to risks during the 2008-2009 presidential transition.

- Require the National Intelligence Council (NIC) to lead an analytic effort to assess risk to U.S. interests during the presidential transition period.<sup>48</sup> This effort

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<sup>44</sup> "Transition: Heads We Win, Tails You Lose," DHS Leadership Journal, January 19, 2008. <http://www.dhs.gov/journal/leadership/2008/01/transition-heads-we-win-tails-you-lose.html>.

<sup>45</sup> Siobhan Gorman, "Homeland Security Handoff-Career Employees Move Into Portions Once Held By Political Appointees," *Wall Street Journal*, January 11, 2008.

<sup>46</sup> White House website, National Security Council. <http://www.whitehouse.gov/nsc/>.

<sup>47</sup> White House website, Homeland Security Council. <http://www.whitehouse.gov/hsc/>.

<sup>48</sup> The NIC is a "center of strategic thinking within the US Government, reporting to the Director of National Intelligence (DNI) and providing the President and senior policymakers with analyses of foreign policy issues that have (continued...)

- could result in the issuance of a classified and unclassified National Intelligence Estimate discussing the intelligence aspects of the upcoming transition.
- Establish a presidential transition Mission Manager to lead and coordinate all federal intelligence and law enforcement analytic efforts.<sup>49</sup>
  - Enhance the National Counterterrorism Center's (NCTC) ability to receive and assess threat information.<sup>50</sup>
  - Ensure the DHS' Office of Intelligence and Analysis receives relevant threat information in a timely manner to facilitate sharing activities with domestic federal, state, local, tribal, and private sector organizations.<sup>51</sup>
  - Enhance the Interagency Threat Assessment Coordination Group's ability to coordinate and report federal and local threat information that may be related to the presidential transition.<sup>52</sup>
  - Provide the nation's state fusion centers information and specific indicators of suspicious activity that may portend possible risks associated with the presidential transition.<sup>53</sup>

### *Incoming Administration Considerations and Options*

During phase 1 of the transition, the presidential candidates and their assembled national security teams may be attempting to ascertain the current Administration's national security policies and activities and collaborate with it on issues that may affect the prospective presidency. To support these efforts, according to a senior Administration official, since the summer of 2007, the DHS has been working on a plan to prepare for the presidential transition.<sup>54</sup> While the details of this plan have not been made public, news articles have reported that the former Deputy Secretary of the DHS spent a great deal of time addressing transition-related issues.<sup>55</sup> In consideration of some work already being pursued at DHS, and in making new recommendations, the *HSAC*

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been reviewed and coordinated throughout the Intelligence Community. The work ranges from brief analyses of current issues to (strategic) estimates of broader trends at work in the world." NIC website. [http://www.dni.gov/nic/NIC\\_home.html](http://www.dni.gov/nic/NIC_home.html).

<sup>49</sup> ODNI Mission Managers are responsible for identifying and coordinating intelligence community expertise to address issues of national security interest. See generally, Kevin Whitelaw, "DNI-Mission Manager to Track North Korea," *United States News and World Report*, November 3, 2006.

[http://www.usnews.com/usnews/news/articles/061103/3dni.web2.htm?s\\_cid=rss:site1](http://www.usnews.com/usnews/news/articles/061103/3dni.web2.htm?s_cid=rss:site1).

<sup>50</sup> The NCTC is responsible for combating the terrorist threats to the United States and managing the Nation's counterterrorism intelligence and strategic operational planning activities. NCTC website. <http://www.nctc.gov/>.

<sup>51</sup> The Office of Intelligence and Analysis is responsible for using information and intelligence from multiple sources to identify and assess current and future threats to the United States. DHS website. <http://www.dhs.gov/xabout/structure/#1>.

<sup>52</sup> The ITACG is a federal-state interagency organization with responsibility for "analyzing and assisting with the dissemination of federally coordinated homeland security, terrorism, and weapons of mass destruction information." Implementing Recommendations of the 9/11 Commission Act of 2007, Sect. 210(d), P.L. 110-53.

<sup>53</sup> Fusion Centers: Issues and Options for Congress, John Rollins, Congressional Research Service, January 18, 2008.

<sup>54</sup> Conversation with senior administration official, December, 2007.

<sup>55</sup> "Pressure Points for the Department of Homeland Security," *Congressional Quarterly - Homeland Security Weekly Edition*, October 22, 2007.



*Presidential Transition Report* proposed that the following issue areas be addressed during the Department's transition: threat, leadership, congressional oversight, policy, operations, succession, and training.<sup>56</sup> While many national security observers found the report to be a good effort at addressing transition related issues that require the focus of DHS, others argue that the report fell short of meeting the needs of all facets of the transition period.<sup>57</sup> Specifically, some national security observers argued that the options put forth were too narrow in scope and found the report lacking in the following areas.

- Too much focus on outgoing Administration efforts, and too little attention given to the activities related to preparing the incoming Administration for the challenges it will likely face;
- Too much emphasis on the administrative process of transitioning to a new Administration, rather than ensuring incoming Administration employees are cognizant of current and projected substantive homeland security issues likely to be faced during the first year of the Presidency;
- No discussion of how state, local, tribal, and private sector leaders with homeland security responsibilities should prepare for activities related to the upcoming presidential Administration transition;
- Little detail provided on how training, education, and exercise activities can be used to prepare incoming Administration officials with national security responsibilities to be better prepared to meet current and future challenges; and
- No discussion or apparent plans to use the members of the HSAC task force to provide assistance or support to incoming Administration homeland security leaders.<sup>58</sup>

What is unclear is whether the transition-related efforts pursued by DHS or recommended by the HSAC are being undertaken by other federal agencies with national security responsibilities. Also unclear is the role, if any, of non-federal entities with security responsibilities and members of the prospective presidential candidates national security teams, in participating in the current Administration's transition planning efforts. Current Administration officials responsible for interagency coordination activities have stated that they have, and will continue to, undertake a number of transition efforts designed for the next Administration's national security leaders.<sup>59</sup> The stated focus of these efforts include meeting with government and private sector experts who have presidential transition expertise, preparing briefings books and policy memos detailing the issues of most concern to the current Administration, and developing interagency policy coordination reference manuals.<sup>60</sup> Senior Administration officials also stated that, after election day and prior to the inauguration, the current Administration plans to offer the incoming Administration's national security team the opportunity to attend exercises focused on

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<sup>56</sup> While the HSAC exclusively efforts focused on assisting DHS transition efforts, many of the findings and recommendations are considered to be relevant to other organizations with national security responsibilities.

<sup>57</sup> It should be noted that the objective of the HSAC presidential transition report was to provide recommendations to the current DHS Secretary on matters related to homeland security. The report did not focus on issues of possible concern to the incoming Administration's nominee for Secretary of the DHS and does not address transition issues that may be relevant to other federal departments or agencies.

<sup>58</sup> Conversation with senior Administration official and members of the HSAC Task Force, March 2008.

<sup>59</sup> Conversation with senior Administration officials, December, 2007.

<sup>60</sup> Conversation with senior Administration officials, March, 2008.

understanding and testing national security coordination capabilities.<sup>61</sup> While this idea may have merit, some argue that, in order for such an activity to be useful to the incoming Administration, early participation by members of the prospective President-elect's national security team should be included in initial discussions of designing the parameters of these exercises. Some national security observers are concerned about the selection of the issues that the current Administration decides to use as the basis for the incoming Administration's exercise activities. Some suggest that the exercises should focus on catastrophic issues; nuclear terrorism (at home or abroad), major natural disaster, major offensive against deployed military forces, or some other significant national security incident. Others opine that the most likely non-catastrophic scenarios should be used as a basis for these exercises: increased threat environment, detonation of an improvised explosive device in the homeland, or some less significant incident. Regardless of the scenario, it does not appear that the goals of the exercises are to convey a sense of subject-matter expertise on a topic or design the perfect prevention or response plan for each possible incident that might affect United States interests. Rather, the training appears to be focused on assisting the incoming national security team members to understand United States national security capabilities and limitations and how the federal government's interagency team might coordinate activities in a heightened risk environment.

### *Congressional Considerations and Options*

Some national security observers see congressional interest in and support of presidential transitions as a crucial aspect of orderly transfers of power in the executive branch. Others argue that Congress should confine its activities to simply providing the funds necessary to support the transfer of presidential authority and act quickly to confirm the President-elect's nominated senior leadership team. Regardless of the level of involvement in the presidential transition desired by the incoming and outgoing Administrations, congressional leaders have already voiced concern about the upcoming election period, and noted a desire to provide oversight and resources to support the change of Administrations.<sup>62</sup> Some suggest that, without early and substantive congressional involvement in presidential transition activities, foreign and domestic security risks may not be addressed in as full a manner as possible.<sup>63</sup>

*Possible Congressional Activity* . During phase 1, congressional support and inquiry may include

- appropriating resources to support outgoing and incoming national security collaboration efforts,
- holding classified and unclassified hearings and meetings with the both the incoming and outgoing Administrations to ascertain current transition activities,<sup>64</sup>

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<sup>61</sup> Ibid.

<sup>62</sup> Lieberman Calls on Senate Budget Committee to Adequately Fund FY2009 Homeland Security Needs, website of the Senate Committee on Homeland Security and Governmental Affairs, February 22, 2008.

<sup>63</sup> For listing of congressional legislation addressing various aspects of national security considerations during presidential transitions see **Appendix C**.

<sup>64</sup> See letters, House Homeland Security Chairman Bennie Thompson requesting the DHS to provide details regarding the Department's presidential transition activities. Thompson Questions Chertoff on Administration Transition Plans, House Homeland Security Committee Website, February 7, 2008.

<http://hsc.house.gov/SiteDocuments/20080207172628-83729.pdf>.

DHS Secretary Chertoff sent Chairman Thompson a letter in response where he answered some of the questions asked in the Chairman's letter, and claimed executive privilege regarding specific Department transition related activities.

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- submitting questions to the outgoing Administration to ascertain transition planning activities and the known and projected risks during the transition period, and
- providing a sense of the Congress resolution that notes the importance of effective and collaborative activities between the departing Administration and the incoming Administration.

Congress may also wish for the current Administration to provide

- the names of agency leaders responsible for making national security related decisions during the presidential transition period,
- briefings on the possible risks to the presidential transition process,
- information about the significant national security operations that will be ongoing during the transfer of power, and
- briefing about the Administration's efforts to engage and collaborate with prospective new Administration senior security officials.

Congress may also consider addressing the upcoming presidential transition with legislation requiring the outgoing Administration to refrain from activities that could commit the next administration to national security actions that would unnecessarily bind the hands of the next president.

An area of apparent congressional interest is the near-term departure of knowledgeable political appointees and career managers during a presidential transition that may significantly hamper the federal government's ability to prevent and respond to issues of national security importance. Chairman Thompson of the House Homeland Security Committee recently observed that vacancies at the DHS are "an enormous security vulnerability should an attack occur during the upcoming presidential transition."<sup>65</sup> Early in the presidential transition period, Congress may choose to determine the executive branch departments and agencies with national security responsibilities, review the projected leadership succession plan, and obtain the names of the individuals who have the authority to undertake action in the event an incident occurs during the transfer of power.<sup>66</sup> In the months leading up to the 2008 presidential election, many national security observers expect that Members of Congress will increase the number of questions posed

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Response to Chairman Thompson, Congressional Quarterly Homeland Security, February 14, 2008.

<http://homeland.cq.com/hs/flatfiles/temporaryItems/20080213-transition.pdf>.

<sup>65</sup> "Many Vacancies at Homeland Security," *International Herald Tribune*, Brian Knowlton, July 9, 2007. In February 2008, DHS provided to the House Homeland Security Committee a letter regarding Departmental presidential transition related activities. The letter also contained a chart noting the occupancy status of leadership billets. Response to Chairman Thompson, Congressional Quarterly Homeland Security, 14 February, 2008. In response DHS provided a letter to the Chairman delineating senior Department positions that were filled, in the process of being filled, or currently vacant.

<sup>66</sup> "Critical Leadership vacancies Impede the DHS," House Homeland Security Committee, July 2007.

<http://homeland.house.gov/SiteDocuments/20070709112923-81091.pdf>.

<http://homeland.cq.com/hs/flatfiles/temporaryItems/20080213-transition.pdf>.

to current national security leaders about plans to support the presidential transition period and require more specificity with respect to current and future planning efforts.<sup>67</sup>

## Phase 2: Selection of party nominee

Phase 2 of the presidential transition includes the time frame from the selection of individuals at the two major political party presidential nominating conventions to the day of the presidential election. This phase will last a few months as the political party conventions usually occur in the summer preceding the November election.<sup>68</sup>

## Outgoing Administration Considerations and Options

Many national security experts suggest that phase two may be the time when the specter of increased risks to the nation is heightened. Officials at all levels of government may become concerned about national security interests being affected during the time leading up to election day. It is possible that the current administration may consider undertaking military or law enforcement-related actions during this time to prevent a group from disrupting the election or threatening national security interests. Such actions, while possibly needed to safeguard the nation's security interest, are often the source of frustration as some question the veracity of the threat information and the need for related preventative actions. Some see these activities as pursued purely for political purposes. Others argue that the current national security leaders are placed in an unenviable position of trying to protect national security interests during times of heightened political skepticism.<sup>69</sup>

With the field of potential presidential candidates likely reduced to two major party candidates, the outgoing Administration may wish to consider continuing the historical pattern of routinely providing presidential nominees and their senior staff information and briefings on matters of national security. Scholars who follow matters of national security note that, "in the pre-election period, it has proved feasible and desirable to provide intelligence briefings to candidates from both or even multiple political parties. For the most part this has been done and it should certainly be continued."<sup>70</sup>

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<sup>67</sup> "I am interested to know if you are beginning to make plans as to how you convey a year hence this department to a new Administration. What steps you might take to lay the foundation to have, hopefully, a seamless transition." Senate Armed Services Committee Holds Hearing on the Defense Authorization Request for Fiscal year 2009. February 6, 2009. Question by Senator John Warner to Secretary of Defense Robert Gates. CRS note: the issue of transition-related activities during the upcoming election was not further addressed during this hearing.

<sup>68</sup> The Democratic National Convention will take place in Denver, CO, from August, 25-28 2008 and the Republican National Convention will take place in Minneapolis, MN, from September 1-4, 2008. As with previous presidential party nominating conventions, these events will most likely be designated National Special Security Events (NSSE). While formal designation of an NSSE has yet to occur, many federal, state, and local planning activities are currently underway in the host cities to facilitate security prior, during, and after the conventions. *National Special Security Events Fact Sheet*, DHS website, August 9, 2003, last accessed February 6, 2008.

[http://www.dhs.gov/xnews/releases/press\\_release\\_0207.shtm](http://www.dhs.gov/xnews/releases/press_release_0207.shtm).

<sup>69</sup> "Could 9/11 Have been Prevented," *Time*, Michael Elliott, August 2, 2002. In response to a question about why the Clinton Administration did not act on information that bin Laden was most likely behind the October 12, 2000 attacks of the USS Cole (three months prior to the end of the administration), a former senior aide stated, "If we had done anything, say, two weeks before the election, we'd be accused of helping Al Gore."

<sup>70</sup> John Halgerson *Getting to Know the President: CIA Briefings of Presidential Candidates; 1952-1992*, Central Intelligence Agency, May 1996.

### *Incoming Administration Considerations and Options*

Section 7601 (c)(2) of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA (P.L. 108-458; 50 U.S.C. 435b)) allows each major party candidate for President to submit, before the date of the general election, requests for security clearances of prospective transition team members who will require access to classified information to carry out their responsibilities as a member of the President-elect's transition team. The Act further states that, to the fullest extent practicable, necessary background investigations and eligibility determinations of prospective transition team members shall be completed by the day after the date of the general election. During phase 2 of presidential transition activities, the prospective Presidents and their staffs will likely undertake efforts to fully understand current United States national security policies and related operational activities, and may request meetings with current Administration security officials. Completion of security clearance reviews for relevant personnel would greatly assist these efforts.

### *Congressional Considerations and Options*

During phase 2 of the federal transfer of executive branch power, Congress may desire to provide resources to federal and non-federal security entities to facilitate the transition efforts, effectuate incident deterring activities, and shore up programs that may be required to respond to an incident.

*Support to Non-Federal Entities with Security Responsibilities* . Some national security observers are concerned that a lack of sufficient coordination and planning between federal and state security entities could affect the presidential electoral results should an incident of national security significance occur prior to or on election day.<sup>71</sup> In addition to providing funds to the incoming and outgoing Administrations to support transition related activities, including national security-related support provided by departments and agencies, Congress may wish to provide resources to non-federal entities responsible for safeguarding the homeland during the presidential transition. Just as all homeland security issues emanate from a local community, an incident occurring in the United States will initially be managed by local responders.<sup>72</sup> Whether it's a man-made incident or natural disaster, some scholars state that all levels of government may wish to consider the constitutional<sup>73</sup> and practical options<sup>74</sup> that would facilitate a transfer of

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<sup>71</sup> United States Has No Plan for Election Delay Due to Terrorism, USA Today, Jim Drinkard, July 13, 2004.

<sup>72</sup> *National Response Framework*, January, 2008. Department of Homeland Security. <http://www.fema.gov/pdf/emergency/nrf/nrf-core.pdf>.

<sup>73</sup> Some security experts are concerned about state government's ability to ensure federal elections occur in the event of an incident of national security significance. Should such an event occur on the day of the election, many options are available to allow the election to continue, including, keeping polling places open for an extended period of time or rescheduling the election on a different day. Some scholars suggest that, as "the United States Constitution explicitly delegates the authority to conduct presidential elections to the states," it can be argued that "states could create a procedure in advance that would include a provision for postponing an election, for designating particular officials to decide whether or not an election has to be postponed, and for setting out procedures for rescheduling the election." States Should Develop Procedures Now to Deal with Potential Terrorist Disruption of Presidential Election, University of Buffalo News Release, James Gardner, July 29, 2004.

<sup>74</sup> Depending on the location and nature of the incident, should a catastrophic event occur just prior to, or on election day, multi-jurisdictional decisions would be required regarding whether to reschedule the presidential election or allow for a rescheduling of the election in those localities affected by the incident. In order to abide by the Constitution and allow for the incoming Administration to have time to prepare for current and national security challenges, decisions regarding the presidential election would need to be made in a relatively quick manner. The 20<sup>th</sup> Amendment of the (continued...)

power in the event a domestic security incident occurs prior to or on the day of election.<sup>75</sup> With a possibility of decision-making paralysis during phase two due to the departure of key national security personnel prior to the election, and acting directors assigned to positions of significant responsibility having uncertainty about agency roles and capabilities, federal prevention, response, and recovery efforts could be delayed. Should such a dynamic occur, greater burden will be placed on local homeland security entities to identify risks to local communities and respond to an incident or set of incidents.<sup>76</sup>

### Phase 3: Election Day

Phase 3 of the presidential transition is the actual day of the presidential election.<sup>77</sup>

### *Outgoing Administration Considerations and Options*

Consistent with the opportunities for public outreach efforts noted in phase 2, senior federal government leaders may wish address risks to the homeland on the day of election. In addressing any known or possible threats, senior federal officials might offer that citizen involvement in the democratic process is an effective way to demonstrate to those who wish to harm the nation that acts of intimidation will not affect the electoral process. Other actions the Administration might take to support the voting public's confidence in participating in the presidential elections include providing relevant threat information to state homeland security fusion centers in a expedited manner, working with state and local security officials to secure the nation's polling places, and increasing security for suspected targets in the United States to prevent or mitigate damage from attacks meant to disrupt the voting activities.<sup>78</sup>

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United States Constitution states that the terms of the President and Vice President shall end at noon on the 20<sup>th</sup> day of January following an election with the terms of their successors beginning thereafter.

<sup>75</sup> "States Should Develop Procedures Now to Deal with Potential Terrorist Disruption of Presidential Election," *University of Buffalo News Release*, James Gardner, July 29, 2004.

<sup>76</sup> See generally, "Security Officials Gear Up for United States Elections," Carol Eisenberg, *Newsday*, March 8, 2008. When asked about the incoming and outgoing Administration's willingness to respect and listen to each other's (national security) concerns and priorities and the effect they may have on the ability to safeguard the nation, New York State's Deputy Public Safety Secretary Michael Balboni stated, "I would love to see a seamless transition, but I don't really have much confidence that's going to be the case, given all the partisan bickering." He further went on to state that he has told his team to be prepared for anything, and that "we have to continue operating no matter what happens at the federal level."

<sup>77</sup> Normally, the presidential election is a single-day event when the election is held with the results and determination of the President-elect to be ratified by the electoral college shortly thereafter. There are instances, such as the presidential election of 2000, where the determination of the winning candidate did not occur for approximately five weeks. "Given that a presidential election brings wholesale change in personnel, loss of time hampers a new Administration in identifying, recruiting, clearing, and obtaining Senate confirmation of key appointees." *9/11 Commission Report*, July 22, 2004, p. 215.

<sup>78</sup> It should be noted that any actions taken to safeguard and preserve the sanctity of the U.S. electoral process should recognize the tension between undertaking actions in the name of national security interests and acting in a manner that could be perceived as taking action to disenfranchise certain voters, disrupt the voting process, or negatively affect individual privacy and civil liberties.

### ***Incoming Administration Considerations and Options***

Resolving the presidential election in a timely manner is crucial to allowing the incoming Administration the time necessary to prepare for current and future national security challenges.<sup>79</sup> The longer the presidential election results are delayed the less time the current Administration has to assist the new Administration, President-elect personnel decisions are delayed, and, some security observers would see the U.S. as increasingly at risk due to the uncertainty in who will lead the country.

### ***Congressional Considerations and Options***

While the actual day of the presidential election may be uneventful, some observers argue that legislative oversight of transition activities of the current Administration taken to this point may be key to ensuring the incoming Administration is as well prepared as possible. In enacting the Presidential Transition Act of 1963, Congress provided the current Administration significant discretion in deciding the level of support to be given to the incoming Administration. In recognizing the potential risks that may be associated with a presidential transition, the Act noted the need for an orderly transfer of executive power.

The national interest requires that such transitions in the Office of the President be accomplished so as to assure continuity in the faithful execution of the laws and in the conduct of the affairs of the Federal Government, both domestic and foreign. Any disruption occasioned by the transfer of the executive power could produce results detrimental to the safety and well-being of the United States and its people. Accordingly it is the intent of Congress that appropriate actions be authorized and taken to avoid or minimize any disruption.<sup>80</sup>

### **Phase 4: Post election day to Presidential Inauguration**

Phase 4 of the presidential transition includes the eleven-week time frame from the selection of the winning candidate to the date the President-elect is sworn in to office: inauguration day.

#### ***Unique Risks to Phase 4***

National security considerations unique to this phase of the transition period include incidents of national security significance that are intended to take advantage of the perceived confusion in national leadership. Such incidents may be undertaken with the idea of attempting to have the outgoing and incoming Administrations at odds with one another with respect to presidential decision-making desires and to try and take advantage of perceived interagency coordination confusion.<sup>81</sup> With many of the prior Administration's political appointees stepping down from

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<sup>79</sup> See generally, "Clock is Running on Presidential Transition Effort," *CNN*, Brooks Jackson, November 27, 2000.

<sup>80</sup> The Presidential Transition Act of 1963, Sec. 2, March 7, 1964. 3 U.S.C. 102.

<sup>81</sup> See also, DHS Secretary Chertoff's January 10, 2008, remarks to the DHS Homeland Security Advisory Committee: "We know that the period of transition is a period of heightened vulnerability, not because we have any specific piece of intelligence but because our observation over the last several years, including as recently as this summer when the new British Administration came in and faced attacks within a matter of days, underscores for us the fact that it is in the transition period, when people are doing the handoff, that there is a natural degree of confusion which creates an invitation to people to carry out terrorist attacks, or other damaging enterprises."

their positions and the as of yet to be named or confirmed new political appointees placed in their agencies, some are concerned about the ability of the federal government's ability to effectively recognize, prevent, or respond to an incident of national security interest. Some security experts are concerned that the remaining leadership in various departments and agencies, some of whom are presumably career civil servants that are serving in an acting capacity, could fall victim to receiving conflicting direction from both the outgoing and incoming national security leaders.

### *Outgoing Administration Considerations and Options*

While some presidential observers argue that there is little motivation for the staff of the outgoing Administration to cooperate with incoming Administration members, others suggest that, when it comes to matters of national security, the desire to protect U.S. interests and preserve the outgoing President's legacy should supersede adverse actions or lack of effort by those soon to depart the White House. It is often observed that the level of animus shown by the outgoing President to the President-elect will have a great deal to do with the cooperation the incoming Administration's transition planning team receives from individuals currently in positions of power. It has also been noted that transitions between Administrations of the same party appear to go smoother. The President's statements and actions with respect to the ongoing transition, specifically as it involves matters of national security, will set the tone and spirit of efforts taken by current staff to assist members of the incoming Administration.<sup>82</sup> Any actions or statements that are perceived to undermine the incoming Administration's policy views on national security matters could be seen as attempting to frustrate the transition process, and have negative security repercussions for the new Administration's efforts to conduct foreign policy or address national security-related issues.<sup>83</sup>

Some presidential historians see the primary role of the outgoing Administration during the post-election day period as facilitating a transparent and productive transition environment. The desire is that such actions will allow the incoming Administration to be in the best possible position to identify and respond to any significant national security issues that may arise soon after taking office. Such security-related strategic, operational, and policy transition-related activities can be offered in the form of briefings, written product, exercises to simulate day-to-day and crisis environments, and other aspects of collaboration and coordination awareness activities.<sup>84</sup> <http://www.usnews.com/blogs/news-desk/2008/02/27/homeland-security-cites-successes.html>. Activities that could facilitate an effective national security transition include the providing of timely and relevant national security information, the formation of a council

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<sup>82</sup> "The chief impediment to establishing the proper links in the past has been the fact that at the highest levels of the policy agencies virtually everyone empowered to put these support arrangements in place has been a political appointee whose loyalties are to the outgoing Administration. Hence they have little at stake in supporting the incoming Administration." John Halgerson, *Getting to Know the President: CIA Briefings of Presidential Candidates; 1952-1992*, Central Intelligence Agency, May, 1996.

<sup>83</sup> See generally, "concerns about the volume, timing, and content of (an outgoing President's) executive orders may be heightened during presidential transition periods, particularly when the opposition party is posed to take control of the White House." CRS Report RL34722, *Presidential Transitions: Issues Involving Outgoing and Incoming Administrations*, by (name redacted), pp.1. See also, "some argue that outgoing Presidents should exercise restraint in the final months of their terms, while others would support an incumbent Administration's authority to continue to issue regulations through the end of its term." CRS Report RS20730, *Presidential Transitions and Administrative Actions*, by (name redacted), pp. 4.

<sup>84</sup> See generally, DHS Secretary Chertoff references providing an exit memo to the next Secretary to note homeland security related concerns. Author unknown, "Homeland Security Cites Success," *United States News and World Report*, February 28, 2008.



specifically focused on national security issues, and expediting the security clearance process for incoming members of the President-elect's national security team.

*Effective Use of Presidential Transition Funds* . Prior to 1963, funds were not allocated by Congress to support the presidential transition and coordination between incoming and outgoing Administrations was generally limited to the administrative issues. Since the enactment of the Presidential Transition Act of 1963, Congress has provided the General Services Administration (GSA) funds to support the substantive aspects of the incoming and outgoing change of Administration activities.<sup>85</sup> For FY2009, GSA has requested \$8.5 million to support presidential transition efforts. The requested funds include \$5.3 million for staffing and training of incoming Administration employees; \$2.2 million to provide President Bush with accommodations, a pension, office space and basic staffing, and \$1 million to support executive branch briefing, training, and workshop activities for members of the new Administration.<sup>86</sup>

Historically, funds allocated for presidential transition activities have also been used for travel expenses, the hiring of consultants, and reimbursing federal agencies for various types of support.<sup>87</sup> As authorized by the Act, funds provided by GSA to the incoming Administration can only be used from the time period of the day following the general election to 30 days after the presidential inauguration. The Presidential Transition Act of 1963, as amended by the Act of 2000,<sup>88</sup> authorizes the GSA to provide a greater level of support to the President-elect and prospective senior leaders of the incoming Administration. The Act allows the GSA to coordinate briefings for incoming Administration leaders, provide communication devices to these individuals, and create a directory of legislative and administrative materials that would be useful for new Administration leaders.

*Ensure the President-Elect is Aware of Issues that May Affect National Security Interests* . During this phase of the transition, every effort should be taken to apprise the incoming President and the senior national security staff of current and near-term threats that may affect United States interests.<sup>89</sup> While the new Administration may be aware of many strategic foreign policy and national security issues, activities relating to tactical, operational, and near-term threats will be the items most likely to surprise and negatively affect the new Administration soon after the inauguration. Consistent with section 7601 of IRPTA of 2004 and a recommendation contained in the 9/11 Commission report,<sup>90</sup> Congress requires the outgoing Administration to “prepare a detailed classified, compartmented summary by the relevant outgoing executive branch officials of specific operational threats to national security; major military or covert operations; and pending decisions on possible uses of military force.” To assist with Administration national

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<sup>85</sup> Note: Funds authorized by Congress are only to be used to support post election presidential transition activities. All pre-election transition planning activities are privately financed.

<sup>86</sup> *Budget of the United States Government, Fiscal Year 2009*, Office of Management and Budget, General Services Administration, Page 1065.

<sup>87</sup> GSA, Media advisory: Presidential transition fact sheet, November 17, 2000.

[http://www.gsa.gov/Portal/gsa/ep/contentView.do?pageTypeId=8169&channelId=-13259&P=XI&contentId=9025&contentType=GSA\\_BASIC](http://www.gsa.gov/Portal/gsa/ep/contentView.do?pageTypeId=8169&channelId=-13259&P=XI&contentId=9025&contentType=GSA_BASIC).

<sup>88</sup> P.L. 106-293, October 13, 2000; 114 Stat. 1035

<sup>89</sup> See generally, “the CIA (now the responsibility of the Office of the Director of National Intelligence) must provide support not only to the incoming President but also to his senior (national security) assistants as well.” John Halgerson, *Getting to Know the President: CIA Briefings of Presidential Candidates; 1952-1992*, Central Intelligence Agency, May, 1996.

<sup>90</sup> *The 9/11 Commission Report*, Chapter 13.4, of effort in Congress, pp. 422.

security-related transition efforts, the Act also requires the aforementioned summaries to be provided to the President-elect “as soon as possible after the date of the general elections.”<sup>91</sup>

*Establishment of a Presidential Transition National Security Coordination Council* . The outgoing President may wish to consider creating a Presidential Transition Coordinating Council.<sup>92</sup> However, unlike the make-up of previous Councils, the current Administration may wish to involve members of the President-elect’s national security team to participate interagency discussions and decision-making activities. In light of the national security issues the next Administration is likely to encounter and the possibility of increased risk to national security interests during the transition period, the Presidential Transition National Security Coordination Council could focus on current and projected issues that might affect policy formation and the short-term actions of the new Administration.<sup>93</sup> A joint Administration Presidential Transition National Security Coordinating Council could

- oversee the national security transition related activities of federal departments and agencies;
- facilitate national security focused training and orientation activities to prepare incoming appointees;
- discuss and collaborating on substantive national security issues that are currently underway or pending decision; and
- offer lessons learned from past policy and operational national security activities.

*Expedited Security Clearance Processing for President-Elect Transition Team Members and Nominated Members of the New Administration* . If not already occurring during an earlier phase of the transition period, soon after the election, it is common for the President elect, Vice President elect, and senior members of the incoming Administration’s transition security team to start receiving classified intelligence briefings. For those individuals who do not already possess an active security clearance, the IRPTA of 2004<sup>94</sup> allows the President-elect to submit to the FBI or other appropriate agency the names of candidates to be nominated for high-level national security positions through the level of under secretary as soon as possible after the date of the general elections. Prior to the inauguration, the FBI or other appropriate agencies are responsible for undertaking the background investigations necessary to provide appropriate security clearances to individuals who have been designated by the President-elect as key administration officials. While the adjudication of security clearances is often a concern for individuals who

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<sup>91</sup> The Intelligence Reform and Terrorism Prevention Act of 2004, Section 7601, P.L. 108-458, Enacted December 17 , 2004.

<sup>92</sup> Executive Order 13176, 5 U.S.C. 7301, Facilitation of a Presidential Transition, November 27, 2000. [http://nodis3.gsfc.nasa.gov/displayEO.cfm?Internal\\_ID=EO\\_13176\\_&search\\_term=13176\\_](http://nodis3.gsfc.nasa.gov/displayEO.cfm?Internal_ID=EO_13176_&search_term=13176_).

<sup>93</sup> In possible support for such a proposal former Homeland Security Advisor and Counterterrorism Advisor to President George W. Bush stated, “whoever the (incoming) President is has to have a national security team that can receive information and can begin to work together, literally from the time the election results are clear, through the inauguration. There’s got to be a very seamless national security, homeland security transition. I’ve suggested that there ought to be a joint meeting between the national security officials of the current Administration and the incoming Administration and have a table-top exercise. A new Administration will have their own way of doing things, but they certainly deserve the benefit of understanding how we’ve gone about it during this Administration.” Frances Fragos Townsend, C-SPAN interview transcript, January 4, 2008. <http://www.c-span.org/special/Townsend.asp>.

<sup>94</sup> Section 7601 (f)(1).

have recently been hired into the federal government, it appears the FBI does have the ability to put forth the resources necessary to ensure senior national security officials are investigated and, where warranted, receive the approval to view classified material in an expeditious manner.<sup>95</sup>

### *Incoming Administration Considerations and Options*

From a national security standpoint, phase 4 of the transition period is quite possibly the most hectic and exciting. With eleven weeks between election day and the inauguration ceremony, the outgoing and incoming Administrations have much work to accomplish. As the presidential transition period continues and the window for affecting the electoral process narrows, some see this phase as the most likely time for an enemy of the United States to undertake an action to attempt to throw the country into presidential decision-making chaos. With the campaigning and the election no longer a concern, the President-elect will have little time for celebration and reflecting on the past, as collaboration with the current Administration being seen as an essential element of future success. In this regard the HSAC Administration Task Force has proposed,

the incoming and outgoing Administrations work closely together toward a shared commitment to ensuring a smooth transition of power. This is facilitated by a positive attitude and open mind in both incoming and outgoing Administrations, combined with the willingness to respect and listen to each other's concerns and priorities. The same attitude must also characterize the behaviors of the senior career personnel who remain with the Department and will be counted on to ensure a smooth transition between Administrations.<sup>96</sup>

While numerous transition-related activities commence shortly after a presidential election, some national security experts suggest that none is more important than the efforts undertaken by the national security and intelligence communities to assist in providing information and context to the incoming President and the accompanying new national security team. Given current and projected security challenges, "the transition can no longer be taken for granted as a honeymoon [period] and significant attention needs to be provided to managing the transition."<sup>97</sup> While the incoming Administration has eleven weeks to prepare for assuming the presidency, many activities will need to occur.<sup>98</sup> The President-elect will formally announce leaders of the transition team; personnel will be interviewed to possibly occupy positions in the new Administration; and interaction with the outgoing Administration, Congress, and foreign leaders may occur. The incoming Administration may also:

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<sup>95</sup> Terry Frieden, "FBI to Speed Presidential Transition Background Checks," *CNN*, November 27, 2000.

<sup>96</sup> *Report of the Administration Transition Task Force*, Homeland Security Advisory Council, January, 2008. [http://www.dhs.gov/xlibrary/assets/hsac\\_ATTTF\\_Report.pdf](http://www.dhs.gov/xlibrary/assets/hsac_ATTTF_Report.pdf).

<sup>97</sup> "Perils of Presidential Transition," Glenn P. Hastedt and Anthony J. Eksterowicz, *Seton Hall Journal of Diplomacy and International Relations*, Winter/Spring 2001 edition. The authors further stated: "The United States is the sole remaining superpower, and other countries will look to it for leadership on many matters, whether the government is in a transition period or not."

<sup>98</sup> "Perils of Presidential Transition," Glenn P. Hastedt and Anthony J. Eksterowicz, *Seton Hall Journal of Diplomacy and International Relations*, Winter/Spring 2001 edition. The authors further stated: "The time frame of eleven weeks is simply inadequate for extensive planning in the policy or process areas. Presidential candidates need to do all they can to ensure an orderly, organized, and politically profitable transition. If Presidential candidates are successful (during the Phase for transition period), then their Presidencies can begin on a confident note. If they are unsuccessful, foreign policy (and national security) issues may overwhelm them and their presidency."

- Select cabinet members, with the desire to formally submit to Congress, soon after the presidential inauguration (phase 5), a prioritized list of names of those individuals selected to fill key national security leadership positions.
- Select non-statutory members to be appointed to the National Security Council, Homeland Security Council, and others to serve as the President's and Vice-President's senior national security advisors. Generally, other senior agency positions are left vacant until the Senate has confirmed the President's nominee and the individual has joined the organization. While many senior leaders of the national security community require Senate confirmation,<sup>99</sup> other senior political staff with significant national security responsibilities do not require Senate confirmation, including staff of the NSC and HSC.<sup>100</sup>
- Create a presidential transition website to seek out individuals with national security expertise who will be needed to meet the upcoming challenges and opportunities<sup>101</sup>
- Request current Administration political appointees to remain in their jobs through the inauguration and possibly the confirmation of new national security leaders to allow for continuity and collaboration.<sup>102</sup> Overlap in key positions is allowed for limited circumstances. While agencies cannot employ multiple individuals in the same job billet ("dual incumbency"), options exist to temporarily allow both outgoing and incoming Administration personnel to be assigned to an organization.<sup>103</sup>

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<sup>99</sup> Department leaders with significant national security responsibilities requiring Senate confirmation include the Secretaries of State, Defense, Energy, Justice, Treasury, and Homeland Security, the Director of National Intelligence and numerous intelligence community agency chiefs, and the Director of the FBI.

<sup>100</sup> Of note, it should be recognized that, while the NSC does maintain a cadre of full-time career employees that will presumably stay in place during a presidential transition. It appears the HSC is primarily comprised of political appointees with few career detailees from cabinet level agencies. The decision making ability and effectiveness of policy and operational direction provided to departments and agencies by the HSC may be lessened due to fewer numbers of permanent personnel and the possibility of a lack of expertise to address the various aspects of homeland security related issues. Interestingly, security experts are divided on whether future Administrations may see the need for a separate NSC and HSC. Many national security experts think that homeland security is a subset of national security. Future Administrations may only establish a NSC with an office responsible for addressing the nexus of national security and homeland security issues contained therein.

<sup>101</sup> "Bush Campaign Creates Website for Presidential Transition," December 4, 2000, *CNN*.

<sup>102</sup> While it is customary for the current Administration's political appointees to resign prior to the new President taking office, specifically if the incoming Administration is of a different political party, "it is common for the incoming Administration to ask certain persons to remain in their jobs during the transition to ensure needed continuity during the initial period of staffing." United States Office of Personnel Management, Transition to a New Presidential Administration, OPM website.

<http://www.opm.gov/transition/trans20r-ch1.htm>.

<sup>103</sup> To support national security continuity efforts and to allow incoming Administration officials to have the benefit of the knowledge and experience of their departing counterpart, OPM offers the following options: an agency can establish a different job billet to employ the designated successor for a brief period of time, OPM may authorize the use of SES limited appointment authorities for short periods of time for temporary executive positions, and agencies may establish temporary transition Schedule C positions for non-executive positions to help with transitions. United States Office of Personnel Management, Transition to a New Presidential Administration, OPM website.

<http://www.opm.gov/transition/trans20r-ch1.htm>.

- Select career federal employees with significant national security expertise to be detailed to the transition team.<sup>104</sup> Specific focus given to members of the military, intelligence community, and diplomatic corps with expertise in the policy priorities of the new Administration.
- Request substantive briefings on policies and programs of concern to assess historical challenges prior to deciding to revise or eliminate current activities.

Some security observers are concerned about a perceived leadership void that can occur during the transition period when the outgoing Administration has constitutional authority, but diminished influence, and the President-elect has much influence, but no authority.<sup>105</sup> However, actions can be taken by the outgoing President and President-elect to ameliorate any suspected appearance of presidential decision-making ambiguity. Issues of foreign policy were hotly debated during the presidential campaign of 1992. After the general election, in which Bill Clinton was elected President, many wondered if the President-elect would attempt to initiate foreign policy changes prior to the inauguration. During the transition period, President-elect Clinton addressed these concerns by stating, “President Bush is to be viewed as the sole voice of United States policy and that the greatest mistake any adversary could make would be to doubt America’s resolve during this period of transition.”<sup>106</sup>

Also during this phase of the transition period the incoming Administration may wish to discuss prospective strategy and policy changes to national security programmatic activities with Members of Congress. If the new Administration desires to announce any new initiatives or changes to existing national security policy or programs, much work will have to be done between the time of the inauguration and the time in which the budget will need to be transmitted to Congress. After the inauguration, the new Administration will have approximately two weeks to submit to Congress a revision of the fiscal year budget proposal submitted by the previous Administration.<sup>107</sup>

### *Congressional Considerations and Options*

During phase 4, Congress has required some agencies, such as DHS, to have a current senior departmental official “develop a transition and succession plan to be presented to the incoming Secretary and Under Secretary for Management to guide the transition of management functions in a new Administration.”<sup>108</sup> The deadline for submitting the plan is the first of December of the year in which a presidential election occurs. While this legislative requirement appears to provide agency transition guidance that some security experts argue was lacking during previous transfers of power, others see potential problems in the manner in which it will be implemented. For the current Administration’s transition plan to be of strategic substantive value, some observers recommend that the individual responsible for drafting the plan should be a career civil servant with a multi-year term appointment. This requirement would allow the main author and

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<sup>104</sup> “Any employee of any agency of any branch of Government may be detailed to the office of either the President-elect or the Vice-President-elect on a reimbursable basis and with the consent of the lending agency head.” United States Office of Personnel Management, Transition to a New Presidential Administration, OPM website. <http://www.opm.gov/transition/trans20r-ch1.htm>.

<sup>105</sup> CRS Report RL30736, *Presidential Transitions*, by (name redacted).

<sup>106</sup> Bill Nichols, “Clinton Sets New Sights.” *USA Today*, November 5, 1992, p. A1.

<sup>107</sup> CRS Report RS20752, *Submission of the President’s Budget in Transition Years*, by (name redacted).

<sup>108</sup> Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, Sec. 2405.

proponent of the transition plan to remain with the agency for a prescribed period of time and provide continuity and advice to a new Administration.<sup>109</sup>

Traditionally, Congress is out of session during much of the phase 4 transition period and may also be undergoing a change in membership. Thus congressional oversight activities during this phase are uncommon. However, some security experts contend that given the current risks to U.S. national security interests, a special session of Congress may be beneficial to ensuring the two Administrations are properly coordinating on national security-related issues. Once Congress returns to session and the new members are sworn in, little time is available prior to the presidential inauguration to inquire about past actions and recommend changes. A special session of Congress might be considered soon after the election to ascertain what the outgoing and incoming Administrations will do with respect to transition-related activities. If still in session during the later stages of phase 4, Congress may wish to hold additional hearings to assess the administration's progress on stated national security transition-related activities. Congressional concerns during this phase might include the status of incoming and outgoing Administration collaboration efforts, how resources are being expended and toward what purpose, and to ascertain the incoming Administration's national security foreign and domestic policy goals. Congress may also wish to make itself available during phase 4 to address resource requests that emanate from the two Administrations should an incident of national security significance occur.

## **Phase 5: Presidential Inauguration: Placement of New Administration Officials and Formation of New Policies**

Phase 5 of the presidential transition includes the time frame from the presidential inauguration to a period when the new Administration has its senior national security leaders confirmed, designated other non-congressionally confirmed political appointees and advisors in place, and established and implemented new national security policies. This phase can last a few months to well into the first year of the presidency.

### ***Unique Risks to Phase 5***

National security considerations unique to this phase of the transition period would include incidents of national security significance that are intended to subject the new Administration to a crisis and test the actions and policies of the new leaders.<sup>110</sup> An incident of national security significance could occur while the new Administration's national security leadership positions are vacant; personnel have been confirmed, but are new to their respective positions; or national security policies are being developed.<sup>111</sup> Entities that wish to affect United States national security

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<sup>109</sup> Rob Margetta, "Better Management Key to Transformation at Homeland Security," *Congressional Quarterly*, December 14, 2007.

<sup>110</sup> "As recent history has shown, the most vulnerable period is 30 days prior to the election through six months after the change in Administrations." *Report of the Administration Transition Task Force*, Homeland Security Advisory Council, January, 2008. [http://www.dhs.gov/xlibrary/assets/hsac\\_ATTTF\\_Report.pdf](http://www.dhs.gov/xlibrary/assets/hsac_ATTTF_Report.pdf).

<sup>111</sup> For example, less than five weeks after the first inauguration of President Clinton, February 26, 1993, the first attack on the World Trade Center occurred. Whether the attacks were coincidentally timed with the new presidency or the perpetrators perceived an opportunity to test the new Administration is a debate among national security experts. Also, less than eight months after President George W. Bush was sworn in as the nation's forty-third President Al-Qaeda launched a series of attacks on New York City and the Pentagon in Arlington, VA, with a fourth hijacked plane crashing in Shanksville, PA. At the time of the attacks, 227 of 508 (45%) of President Bush's top political positions had been filled, with 106 of the individuals in these positions on the job for less than eight weeks. Lowell Feld, "The (continued...)"

interests may see this time period as uniquely vulnerable, with the President and newly assigned staff being perceived as ill-equipped to handle a domestic or foreign national security crisis.

### *Departed Administration Considerations and Options*

While the outgoing Administration will no longer have constitutional responsibility or authority for safeguarding the country, the actions that were or were not taken prior to the presidential inauguration will be a part of the departing President's legacy. The "Protective Power" as referenced in the presidential oath "has been interpreted as investing the President with expansive authority to take actions necessary to protect the property and personnel of the United States from attack or other dangers."<sup>112</sup> Some scholars argue that the President's duty to protect the country is not limited to the time in which the office was occupied with responsibility extending into the next President's term to a point at which the new Administration has had reasonable opportunity to organize itself and formulate national security policies. As such, any "failure to alert and cooperate with the incoming President with respect to imminent dangers facing the nation directly exposes the country to substantial risk,"<sup>113</sup> and may negatively affect the previous President's legacy.

Similarly, the outgoing President should be cautious of any activity taken in the last few days of the Administration or after the inauguration that could hamper the incoming Administration's transition efforts. Such actions might include

- establishing or revising national security organizations, policies, or programs that are clearly counter to the positions of the incoming President;
- interacting with foreign leaders that may have the perception of attempting to portray future U.S. foreign policy desires;<sup>114</sup> and
- undertaking any steps that would have a negative effect or produce unintended national security consequences.

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Intelligence Community Could Not Connect the Dots, Was the Lack of Political Appointees On the Job a Reason Why?," *War Politics and Literature*, 2002.

<sup>112</sup> In re Neagle, 135 United States 1 (1890); Henry P. Monaghan, *The Protective Power of the Presidency*, 93 Colum. L. Rev. 1, p. 14-15 (1993).

<sup>113</sup> "The Law of Presidential Transitions," *Boston School of Law Working Paper*, William P. Marshal and Jack M. Beerman, 2005. The authors went on further to state: "The new Administration cannot be expected to sift through complex information, much of it classified and much of it conflicting, regarding potential dangers to the United States upon taking office and still be able to craft an effective response. Reliance on the advice and direction of the previous Administration is absolutely necessary to protect the United States. An outgoing President's refusal to provide that [national security related] information and warn his successor as to potential dangers contradicts his protective duties. Accordingly, the outgoing President's decisions whether or not to brief his successor on domestic and international threats to national security are not optional. "To preserve, protect, and defend" means cooperating to the fullest degree to protect the United States against impending danger."

<sup>114</sup> Ibid. "The President must be aware and solicitous of the likely directions that the new President may take on foreign affairs issues and not work in a manner that may undermine the ability of the new President to achieve those goals."

### *New Administration Considerations and Options*

The newly elected President, who will wish to quickly set an agenda and move toward implementing goals stated during the campaign, may find the issuance of executive orders and other presidential directives as a way to distinguish new policies from the outgoing President. This may be particularly desirable when outgoing and new President are from different parties, and such changes might offer the appearance of instituting change in the early days of the new Administration.<sup>115</sup> Likewise, the new Administration may wish to quickly promulgate new national security policies and strategies for departments and agencies that have national security responsibilities. While the issuance of new strategies and policies may not, in and of themselves, make the country safer, they will convey the new Administration's national security priorities and provide the nation an opportunity to assess the new President's intentions. In undertaking efforts to memorialize the new President's national security policies, many national security observers suggest that the new President may be well served to proceed cautiously and take the time to review and assess current policies,<sup>116</sup> and listen to the views of outgoing political officials and remaining career government, military, and diplomatic personnel prior to implementing significant changes in current strategies or operations.<sup>117</sup> To support continued transition efforts and to be afforded the opportunity to learn of the previous Administration's national security policy and program successes and failures, the new President may wish to have prior Administration officials maintain their security clearances and routinely receive briefings regarding current and emerging threats to United States interests.<sup>118</sup>

### *Congressional Considerations and Options*

Some presidential historians suggest that legislative inquiry and support during the incoming Administration's transition efforts is crucial if Congress' is to provide effective oversight during the new presidency. Professor Williams of the Massachusetts Institute of Technology argues that, "the coming transition to a new Administration and Congress opens a window for reform of the organizational structures and processes that surround planning and resource allocation for homeland (and national) security in the executive branch and Congress."<sup>119</sup> While the transition is

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<sup>115</sup> CRS Report RL34722, *Presidential Transitions: Issues Involving Outgoing and Incoming Administrations*, by (name redacted).

<sup>116</sup> Regardless of the previous experience of the President and assuming best efforts are expended to support the transition by outgoing Administration officials, the new President's thoughtful decision-making efforts could encounter the challenges of a "three-part syndrome; (1) being caught by surprise by events in the domestic or foreign arena, (2) attempting to demonstrate a capacity to lead resulting in the President making hasty decisions, and (3) [perceiving] the need to demonstrate that the Administration is superior to the previous by quickly reorganizing organizations and enacting new policy." "Perils of Presidential Transition," Glenn P. Hastedt and Anthony J. Eksterowicz, *Seton Hall Journal of Diplomacy and International Relations*, Winter/Spring 2001 edition.

<sup>117</sup> Responding to a reporter's questions about the upcoming presidential election and possibly advice given to the candidates to not get "locked-in" to a plan for Iraq, Lt. General Odierno stated that, "from a military perspective do an assessment and ask the military leaders involved to give you the current assessment and then make a decision on where we want to go in Iraq; what are their goals in Iraq, what is their policy, and what do they want to achieve." DoD Website News Transcript, DoD News Briefing with Lt. Gen. Odierno from the Pentagon Briefing Room, Arlington, Va., March 4, 2008.

<sup>118</sup> If desired, all former Presidents and Vice Presidents are afforded the opportunity to receive classified briefings. Some suggest the new administration might benefit from other senior national security officials retaining their security clearance and being granted continued access to classified information.

<sup>119</sup> Cindy Williams, "Strengthening Homeland Security: Reforming Planning and Resource Allocation," *2008 Presidential Transition Series*, February, 2008 (IBM Center for the Business of Government).



an opportunity for Members and staff to interact and have substantive discussions regarding the national security policies and goals of the new Administration, some presidential historians note that “transitions are hit-and-miss affairs that handicap the new President in shifting from campaigning to governing and create problems for the Congress.”<sup>120</sup> Should the new Administration not make an effort to avail Congress of its foreign and domestic security policy intentions and if Congress does not undertake an active role in understanding the policies and direction of the new Administration, both entities might encounter frustration as neither will feel it is receiving the necessary support to fully uphold its responsibilities. As noted by Mr. Ink, President Emeritus of the Institute of Public Administration, new appointees are in danger of stumbling during the first crucial weeks and months of an Administration, not so much from what they are striving to do, but from how they are functioning and a lack of familiarity with the techniques that are most likely to get things done in a complex Washington environment.”<sup>121</sup> In overseeing and supporting the new Administration’s national security objectives, Congress has a number of activities it can undertake.

*Prioritize Hearings for Nominated Senior Executive Branch Leaders Who Have Significant National Security Responsibilities*. A congressional authority that is often noted for making it possible for the incoming Administration to be in the best position to address national security issues shortly after inauguration is to quickly confirm qualified key political appointees.<sup>122</sup> While Congress will also be undergoing a transition having just been sworn in two weeks prior to the presidential inauguration, some analysts see this as the ideal time for the new Congress to meet with the incoming President’s national security leadership team and put in place a foundation to allow for expedited confirmation hearings soon after the President takes the oath of office. As noted by a recommendation of the 9/11 Commission Report of 2004.<sup>123</sup>

Since a catastrophic attack could occur with little or no notice, the federal government should minimize as much as possible the disruption of national security policymaking during the change of Administrations by accelerating the process for national security appointments. We (9/11 Commission) think the process could be improved significantly so transitions can work more effectively and allow new officials to assume their new responsibilities as quickly as possible.

Consistent with recommendations contained in the 9/11 Commission report, IRPTA of 2004<sup>124</sup> provides a sense of the Congress regarding an expedited consideration of individuals nominated by the President-elect to be confirmed by the Senate. The Act further holds that the Senate committees to which these nominations are referred and the full Senate should attempt to complete consideration of these nominations within 30 days of submission by the newly elected President. In undertaking this responsibility, many security observers see a healthy tension between Congress’ desire to act quickly to hold confirmation hearings and the need to ensure that

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<sup>120</sup> Dwight Ink, Committee Report, *Statement to the Senate Committee on Government Affairs Regarding the Presidential Transition Act of 2000*, July 18, 2000.

<sup>121</sup> Ibid.

<sup>122</sup> While there is no proscriptive order in which the incoming President should nominate, or Congress should hold hearings regarding, new senior Administration officials with national security responsibilities, a review of the cabinet positions noted in the Presidential Succession Act of 1947 (3 U.S.C. Section 19) and the previous administration’s National Security Council and Homeland Security Councils may provide some assistance in prioritizing personnel placement activities.

<sup>123</sup> 9/11 Commission Report, July, 2004, Chapter 13, p. 422.

<sup>124</sup> Section 7601(b).

individuals with the relevant national security background and experience have been put forth by the President-elect. In many cases, highly qualified career Senior Executive Service personnel will be in an acting capacity for some of these Senate confirmed positions. Thus the perceived urgency to fill these positions quickly may be negated while Congress ensures individuals capable of meeting the demands of the position are selected and confirmed. Congress may also

- work with the new Administration to understand its national security priorities and where applicable have the changes in policies and programs reflected in the 2009 budget;
- pass FY2009 appropriations without undue delay;
- quickly assign new and existing Members of Congress to committees focusing on national security issues to allow these individuals to receive briefings and understand the issues for which they have oversight;
- hold hearings comprised of national security experts to gather ideas on prospective U.S. national security policies and goals; and
- hold hearings soon after the new Administration has produced its national security strategies, policies, and presidential directives to discuss objectives and determine presidential priorities.

## **Conclusion**

While the first presidential transition in the post 9/11 era is of concern to many national security observers, risks during the transition period may be minimized with proactive executive branch and congressional actions. It is likely the new President will face many national security-related challenges upon taking office. Whether the enemies of the United States choose to undertake action counter to the nation's security interests or the new President experiences a relatively peaceful period during the transition, the new Administration's recognition and response to these challenges will depend heavily on the preparation and education activities that have occurred prior to the inauguration. While it may be impossible to stop an incident of national security significance during the presidential election process, there are steps that can be taken during all phases of the transition to lessen the risks to the nation. Such actions may be helpful in preparing the nation for possible risks to the presidential election period and mitigating the effects of acts taken by those that wish to cause confusion during the transfer of presidential power. The transition-related actions or inactions of the outgoing and incoming Administration may have a long-lasting affect on new President's ability to effectively safeguard United State's interests and may also effect the legacy of the outgoing President.

## Appendix A. Recent Military Operations Occurring During United States Presidential Transition Periods<sup>125</sup>

| Presidents         | Military Operations   |
|--------------------|---|
| Carter to Reagan   | In the course of a secret operation to rescue the American hostages held in Iran, a collision between a helicopter and a transport aircraft caused the deaths of eight United States servicemen on April 25, 1980.  |
| Reagan reelection  | United States forces invaded the Caribbean island of Grenada in October 1983.   |
| Bush to Clinton    | President Bush announced United States participation in the enforcement of “no-fly” zones in Iraq on September 16, 1992.  |
| Bush to Clinton    | United States armed forces were dispatched to Somalia to participate in a United States-led United Nations response to humanitarian crisis. President Bush reported the deployment to Congress on December 10, 1992.  |
| Clinton transition | President Clinton, on January 21, 1993, stated that his administration would continue the Bush Administration’s Iraq policy.  |
| Clinton transition | In response to an unsuccessful assassination attempt on former President Bush by Iraqi agents, the United States launched missiles targeting the Iraqi intelligence service headquarters on June 26, 1993.  |
| Clinton reelection | President Clinton, on December 21, 1995, notified Congress that over 20,000 members of the United States armed forces would be deployed in support of the NATO forces implementing the Bosnian peace agreement.   |
| Clinton reelection | United States armed forces were deployed in Liberia in order to evacuate United States citizens and third-country nationals who had taken refuge from the deteriorating security conditions in the United States embassy, and to defend the embassy. President Clinton notified Congress of the deployment on April 11 and May 20, 1996, noting that the deployment would continue until the security situation improved. |
| Clinton reelection | United States military forces were dispatched to the Central African Republic to provide enhanced security for the United States embassy in the capital, Bangui, and evacuations as necessary. The deployment was reported to Congress on May 20, 1996.   |
| Clinton to Bush    | United States military operations against Iraqi air defense forces continued in 1999 and 2000 in enforcement of the declared “no-fly” zones.  |
| Clinton to Bush    | President Clinton notified Congress on January 19, 1999, that United States forces continued to participate in the NATO-led stabilization force in Bosnia, in numbers reduced from the original deployment.   |
| Clinton to Bush    | President Clinton, on February 25, 1999, notified Congress of the continued deployment of United States military personnel in Kenya following the attack on the United States embassy there in August 1998.   |
| Clinton to Bush    | United States and NATO forces began a campaign of air strikes against Yugoslavia on March 24, 1999, in response to Yugoslavia’s campaign of repression against ethnic Albanians in Kosovo. Additional United States forces provided humanitarian relief support from bases in Albania and Macedonia.  |

<sup>125</sup> Table prepared by (name redacted), Information Research Specialist, Knowledge Services Group, CRS, March 13, 2008. This table is based on deployment information contained in CRS Report RL32170, *Instances of Use of United States Armed Forces Abroad, 1798-2007*, by (name redacted).

| <b>Presidents</b> | <b>Military Operations</b>  |
|-------------------|---|
| Clinton to Bush   | A limited deployment of United States forces was sent to support the U.N. multinational force sent to restore peace in East Timor. President Clinton notified Congress on October 8, 1999.  |
| Clinton to Bush   | President Clinton notified Congress on October 14, 2000, of the deployment of approximately 100 armed forces personnel to provide assistance in Yemen in the wake of the terrorist attack on the <i>USS Cole</i> .  |
| Bush reelection   | Military operations against Iraq began on March 19, 2003, President Bush reported to Congress on March 21 <sup>st</sup> . He notified Congress on March 20 of the continuation of a number of military operations in the war on terrorism, including actions against al-Qaeda militants in Afghanistan, cooperative operations with Pakistan in the border areas, maritime antiterrorist operations, and training in counterterrorism for other cooperating nations' armed forces. He also notified Congress on May 14, 2003 of continued United States deployment in Kosovo and adjoining countries, and on July 22 <sup>nd</sup> of continued deployment in Bosnia. |
| Bush reelection   | President Bush reported on February 25, 2004, that a combat-equipped force had been sent to Haiti to augment security forces at the United States embassy and to protect United States citizens and property. Additional forces were dispatched within two weeks, partly to make preparations for the arrival of a U.N. multinational force.  |

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## Appendix B. Representative Examples of Incidents of National Security Interest Occurring During Periods of Governmental Transition<sup>126</sup>

Appendix B provides a representative listing of incidents of terrorism that have occurred during times of transitions of heads of state. The criteria for inclusion in this chart was based on the aggressor's real or perceived intent to change the course of an election or affect future policy of the country during a time of transfer of presidential authority. It should be noted that, barring relatively few examples, there is little evidence that incidents of national security significance were planned for a specific date prior to an election. While varying levels of planning occur prior to an incident, as with most criminal acts, the leader directs, or the individuals act, when opportunity for the best possible outcome is presented. With respect to times of presidential transition, the most optimal time for an attack, for a variety of reasons, may not present the best opportunity for the aggressors to attempt an incident. As such, the potential time frame for risk is present during any phase of the transition, with the effects of an incident differing based on the location of the event, the proximity to the election date, and the reaction and actions of the U.S. national security enterprise.

Many security experts believe that some of the incidences noted below had a significant impact on the outcome of the country's national election or subsequent policies. National security observers are fearful that terrorists groups may see some of the incidences as successes and feel embolden to attempt to affect future national transfers of power by launching attack just before the election. These groups may see the timing of such an action as a viable strategic opportunity to further the goals of their cause. However, it should be noted, other security experts suggest that incidences of national significance taken prior to a national election could produce a reaction that is counter to the long-term goals of the terrorist group.

| Type of Incident and Brief Description   | Parties Involved                                | Date(s); Pre-election or Transition Phase  |
|--|---|--|
| <p><b>Iran Hostage Crisis</b></p> <p>"Radical students" stormed the United States embassy in Tehran and took hostage diplomats, other staff, and Marine guards. The incident did not initially appear intended to affect the upcoming United States presidential elections, but, ultimately, as the standoff lengthened, was generally agreed to have had a significant influence on the electoral contest between President Jimmy Carter and Ronald Reagan.<sup>a</sup></p> | <p>United States, Islamic Republic of Iran.</p> | <p>November 4, 1979-January 20, 1981. Pre- and post-election; hostages were released as Ronald Reagan was sworn in as President.</p> |

<sup>126</sup> Prepared by (name redacted), Information Research Specialist, Knowledge Services Group, CRS, February 28, 2008.

| Type of Incident and Brief Description  | Parties Involved  | Date(s); Pre-election or Transition Phase                                  |
|---|---|--|
| <p><b>Northern Ireland, 1982</b></p> <p>Violence in opposition to October 20, 1982, elections to form a Provincial Assembly caused more than 30 deaths by early December, including those of three Royal Ulster Constabulary policemen killed when their vehicle drove over a remote-controlled bomb.<sup>b</sup></p>   | <p>United Kingdom, Irish Republican Army, militant Protestant groups.</p> | <p>1982. Transition period following elections to Provincial Assembly.</p> |
| <p><b>Bombing of Marine Barracks, Beirut, Lebanon</b></p> <p>A truck bomb destroyed the compound housing United States Marines near Beirut airport, killing 242 Americans. Islamic Jihad claimed responsibility for the attack. The Reagan Administration's Lebanon policy quickly became a campaign issue due to questions raised by Democratic presidential candidates.<sup>c</sup></p>   | <p>United States, Islamic Jihad.</p>                                      | <p>October 23, 1983. Pre-election.</p>                                     |
| <p><b>Bioterrorism in the United States</b></p> <p>Disciples of Bhagwan Shree Rajneesh deliberately contaminated salad bars in ten restaurants with salmonella, causing over 700 people to become ill. The plot was designed to put out of action enough voters so that Rajneesh's followers could swamp the polls and elect an all-Rajneeshi slate of candidates, thereby taking over the county government, with which the Rajneeshis had disputes.<sup>d</sup></p> | <p>Wasco County, Oregon, followers of Bhagwan Shree Rajneesh.</p>         | <p>September 9, 1984. Pre-election.</p>                                    |
| <p><b>Assassination of President of Lebanon</b></p> <p>President Rene Moawad was killed when a remote-controlled bomb detonated as his car passed over it. Twenty-three other persons were also killed.<sup>e</sup> He had held office for only 17 days.</p>  | <p>Government of Lebanon, unknown parties.</p>                            | <p>November 22, 1989. Transition period.</p>                               |
| <p><b>Assassination of Rajiv Gandhi</b></p> <p>Former Indian Prime Minister Rajiv Gandhi, campaigning for his Congress Party in national elections, was killed, along with 14 others, when a female suicide bomber detonated herself next to him at a campaign appearance.<sup>f</sup></p>  | <p>Congress Party (India), Liberation Tigers of Tamil Eelam (LTTE).</p>   | <p>May 22, 1991. During national voting period.</p>                        |
| <p><b>IRA Attacks in Britain</b></p> <p>The Irish Republican Army conducted a bombing campaign in Britain explicitly aimed at influencing the upcoming general election: "These attacks signal our determination and resolve to focus the government's attention on their war in Ireland. As they face into a general election, our volunteers will continue to force their occupation of part of our country onto the British political agenda."<sup>g</sup></p>     | <p>United Kingdom, Irish Republican Army.</p>                             | <p>March 1992. Pre-election.</p>   |
| <p><b>Omagh Bombing, Northern Ireland, 1998</b></p> <p>News reports cite speculation that a bomb attack that killed at least 28 people and wounded over 200 was carried out by the I.R.A. splinter group "Real I.R.A." in an attempt to wreck the peace agreement overwhelmingly approved by referendum in both Northern Ireland and the Irish Republic.<sup>h</sup></p>  | <p>United Kingdom, "Real I.R.A."</p>                                      | <p>August 15, 1998. Post-referendum transition period.</p>                 |

| Type of Incident and Brief Description   | Parties Involved  | Date(s); Pre-election or Transition Phase   |
|--|---|---|
| <p><b>Russian Apartment Building Explosions</b></p> <p>Massive explosions caused heavy casualties in nighttime attacks on apartment buildings, one in Dagestan, two in Moscow, and another in Volgodonsk. The four blasts over a 16 day period killed approximately 300 people.<sup>l</sup> Government officials blamed Islamic extremists for the attacks, which occurred in the last year of Boris Yeltsin's presidency, shortly after the appointment of Vladimir Putin as Prime Minister.</p>  | <p>Russia, Islamic extremists from the Caucasus area (as stated by Russian authorities).</p>        | <p>September 1999.<br/>Transitional period leading up to presidential election.</p> |
| <p><b>Assassination of State Assembly Member, Threats Against Elections</b></p> <p>A Pakistan-based group claimed responsibility for the assassination of a member of the new Jammu and Kashmir Assembly, Abdul Aziz Mir. During the elections for the Assembly, which were held the previous fall, the group had threatened to kill anyone participating in the campaign.<sup>j</sup></p>   | <p>India, Save Kashmir Movement.</p>  | <p>December 20, 2002.<br/>Pre-election and transition period.</p>                   |
| <p><b>Suicide Bombing of Commuter Train, Russia</b></p> <p>A suicide bomber detonated over 20 pounds of explosives aboard a commuter train in the Stavropol region (near Chechnya). Forty-seven persons were killed and 155 injured, many seriously. The attack took place two days before national elections.<sup>k</sup></p>   | <p>Russia, unknown parties (Chechen independence leader Aslan Maskhadov denied responsibility).</p> | <p>December 5, 2003.<br/>Pre-election.</p>  |
| <p><b>Bombings of Commuter Trains, Madrid, Spain</b></p> <p>Ten backpack bombs set off in crowded commuter trains killed 191 people and injured nearly 2,000. Although the government claimed that the Basque separatist group ETA was responsible, many Spaniards believed that the attack was in retaliation for their government's support of the United States' actions in Iraq, and voted into office the Socialist Workers' Party, whose leader, Jose Luis Rodriguez Zapatero, had promised to withdraw all 1,300 Spanish troops from Iraq.<sup>l</sup></p>  | <p>Spain, al-Qaeda affiliates.</p>  | <p>March 11, 2004.<br/>Pre-election.</p>  |
| <p><b>Attempted Bombings of London Nightclub District and Glasgow Airport</b></p> <p>Two men believed to be hardline Islamists carried out two bombing attempts early in the transition period between the governments of Prime Ministers Tony Blair and name redacted. The first was the attempted bombing of an area of nightclubs in London's West End, using fuel bomb devices placed in two Mercedes Benz automobiles. The terrorists' remote detonation attempts failed and the bombs were disarmed. In the second incident, the attackers rammed a blazing Jeep Cherokee loaded with extra fuel into the terminal at Glasgow airport. The driver, Kafeel Ahmed, an engineer, later died of burns in hospital. The passenger, identified as Dr. Bilal Abdulla, a British National Health Service physician, was not seriously injured.<sup>m</sup></p> | <p>United Kingdom, radical Islamists, possibly Al Qaeda sympathizers.</p>                           | <p>June 29-30, 2007.<br/>Governmental transition period.</p>                        |

| Type of Incident and Brief Description  | Parties Involved                    | Date(s); Pre-election or Transition Phase |
|---|-------------------------------------|---|
| <p><b>Assassination of Former Prime Minister, Pakistan</b></p> <p>Former Pakistani Prime Minister Benazir Bhutto, campaigning for parliamentary elections to be held January 8, 2008, was killed along with over 20 other persons in an attack attributed to militant Islamists. A suicide bomber, possibly accompanied by an accomplice firing pistol shots, detonated next to her car following a political rally. Various reports assigned responsibility for the assassination to Al Qaeda's second-in-command, Ayman Al-Zawahiri, or to Baitullah Mehsud, a top Taliban commander in the South Waziristan region of Pakistan. The elections were postponed.<sup>11</sup></p> | <p>Pakistan, Islamist militants</p> | <p>December 27, 2007. Pre-election.</p>   |
| <p><b>Murder of Former Local Government Official, Spain</b></p> <p>A former city council member in northern Spain was shot to death in front of his wife and child by a suspected ETA gunman. The principal Spanish political parties condemned the attack and suspended campaigning for national elections due to be held two days later.<sup>12</sup></p>   | <p>Spain, ETA.</p>                  | <p>March 7, 2008. Pre-election.</p>       |

- a. Mickolus, Edward F., *Transnational Terrorism: A Chronology of Events, 1968-1979*, Westport, Connecticut, Greenwood Press, 1980, as updated in subsequent editions. During the Presidency of Jimmy Carter, Iranian militants stormed the United States Embassy and took 66 Americans captive. While many national security experts suggest the taking of hostages in the United States Embassy in Iran in November 1979 was in response to United States policies, it does not appear that this activity was a direct attempt to affect the United States presidential election of 1980. However, many national security observers suggest the hostage taking actions by the Iranian militants, coupled with the duration that the hostages remained in captivity (444 days) and the United States military's failed rescue attempt in April of 1980, was a contributing factor to President Carter not being reelected. On January 20, 1981, Ronald Reagan was inaugurated President and the hostages were released later that day.
- b. "A Vicious Tribalism' Alarms Ulster," *New York Times*, October 31, 1982; "Flight Of Talent Called Peril To Ulster's Future," *New York Times*, December 13, 1982.
- c. "Democrats Expect To Campaign On Lebanon Issue," *New York Times*, October 25, 1983.
- d. Source: Praeger Security International's Terrorism, Homeland Security, Strategy database.
- e. "Lebanese Lawmakers Meet To Plan Election Of Slain President's Successor," *New York Times*, November 24, 1989, p. A3.
- f. Mickolus, Edward F., *Terrorism, 1988-1991*, Westport, Connecticut, Greenwood Press, 1993.
- g. "I.R.A. Is Vowing Further Attacks In Effort To Disrupt British Election," *New York Times*, March 2, 1992.
- h. "The Day After In Ulster Town: Now 'It's Back,'" *New York Times*, August 17, 1998, p. A1.
- i. "Russia's War Hits Home," *Newsweek*, September 27, 1999.
- j. Source: Praeger Security International's Terrorism, Homeland Security, Strategy database.
- k. Source: Praeger Security International's Terrorism, Homeland Security, Strategy database.
- l. Source: Praeger Security International's Terrorism, Homeland Security, Strategy database.
- m. "Britain Under Attack As Bombers Strike At Airport," July 1, 2007; "Five Under Guard As Police Link London and Glasgow Attacks, July 2, 2007; "Airport Bomb Suspects 'Left Behind Suicide Note Detailing Their Motives,'" July 5, 2007; all from *The Times* (London).
- n. Source: Terrorism Knowledge Base, Memorial Institute for the Prevention of Terrorism <http://www.tkb.org>
- o. "Killing In Spain Curtails Campaign," *New York Times*, March 8, 2008.



## Appendix C. Congressional Legislation Addressing Various Aspects of National Security Considerations During Presidential Transitions, in Chronological Order (1963-2008)

| Congress and Session Introduced             | Date Introduced | Bill       | Title  | Public Law (date became law)    | Time Since Last Transition <sup>a</sup> | Time Until Next Scheduled Transition <sup>a</sup> |
|---|-----------------|------------|--|---------------------------------|---|---|
| 108 <sup>th</sup> , 2 <sup>nd</sup> Session | Sept. 7, 2004   | S. 2774    | 9/11 Commission Report Implementation Act of 2004  |                                 | 3 years, 8 months                       | 4 months  |
| 108 <sup>th</sup> , 2 <sup>nd</sup> Session | Sept. 8, 2004   | H.R. 5024  | 9/11 Commission Recommendations Implementation Act of 2004   |                                 | 3 years, 8 months                       | 4 months  |
| 108 <sup>th</sup> , 2 <sup>nd</sup> Session | Sept. 9, 2004   | H.R. 5040  | 9/11 Commission Report Implementation Act of 2004  |                                 | 3 years, 8 months                       | 4 months  |
| 108 <sup>th</sup> , 2 <sup>nd</sup> Session | Sept. 14, 2004  | H.Res. 775 | Expressing the sense of the House of Representatives with respect to the continuity of Government and the smooth transition of executive power |                                 | 3 years, 8 months                       | 4 months  |
| 108 <sup>th</sup> , 2 <sup>nd</sup> Session | Sept. 23, 2004  | S. 2845    | Intelligence Reform and Terrorism Prevention Act of 2004   | P.L. 108-458<br>(Dec. 17, 2004) | 3 years, 8 months                       | 4 months  |
| 108 <sup>th</sup> , 2 <sup>nd</sup> Session | Sept. 24, 2004  | H.R. 10    | 9/11 Recommendations Implementation Act  |                                 | 3 years, 8 months                       | 4 months  |
| 108 <sup>th</sup> , 2 <sup>nd</sup> Session | Oct. 5, 2004    | H.R. 5223  | National Intelligence Reform Act of 2004   |                                 | 3 years, 9 months                       | 3 months  |
| 88 <sup>th</sup> , 1 <sup>st</sup> Session  | Apr. 24, 1963   | H.R. 4638  | Presidential Transition Act of 1963  | P.L. 88-277<br>(Mar. 7, 1964)   | 2 years, 3 months                       | 1 year, 9 months                                  |

**Note:** Prepared by Ryan Granger, Information Research Specialist, Knowledge Services Group, CRS, February 28, 2008.

a. As of date introduced.

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