

GIVING NONPROLIFERATION NORMS TEETH: SANCTIONS AND THE NPPA

by Randy J. Rydell

Randy J. Rydell is Senior Political Affairs Officer in the Office of the Under-Secretary-General for Disarmament Affairs at the United Nations. He is also currently a Visiting Lecturer at the Woodrow Wilson School for Public and International Affairs at Princeton University. He was a member of the professional staff of the Senate Committee on Governmental Affairs from 1987 through August 1998 and assisted Senator John Glenn in the drafting and subsequent enactment of the Nuclear Proliferation Prevention Act of 1994. The views expressed below are those of the author.

Contemporary observers of world affairs customarily cite interdependence and “globalization” as hallmarks of international security as it approaches the next millennium. The beleaguered nation-state is far from obsolete, however, as activities within this tenacious old institution will continue to have a profound bearing on the evolution of global norms, including those relating to nonproliferation and disarmament.

In rare circumstances, even the efforts of specific individuals can strengthen global norms by bolstering a country’s efforts on behalf of such norms. The efforts of former Senator John Glenn (D-OH) on behalf of nuclear nonproliferation offer a case in point. From his election

to the Senate shortly after India’s first nuclear test in 1974, through the year of what one hopes will be India’s last nuclear test, Senator Glenn was the leading advocate in the Congress for strong US nonproliferation policies. He was the author of America’s three most important nonproliferation laws—the Glenn/Symington Amendments to the Foreign Assistance Act in 1977, the Nuclear Non-Proliferation Act in 1978 (NNPA), and the Nuclear Proliferation Prevention Act in 1994 (NPPA). These three laws provide the overarching framework within which much of US nonproliferation policy is implemented today.

The last law merits particular attention for several reasons. First, be-

ing newer, it has not yet been described or analyzed in any detail in existing publications. Second, it has nevertheless been subject to attack by critics who charge, among other things, that it “failed” to prevent the recent nuclear detonations in South Asia. Third, it has become the focal point of a strident political campaign against sanctions in general, particularly against “unilateral economic sanctions.” Fourth, it deserves closer attention because of the sheer scope of the legislation—it amended numerous laws and gave these laws at long last a cohesive, integrated focus. Fifth, it offers insights into the broader process whereby global norms become internalized in domestic legislation. And finally, it was the capstone of Senator Glenn’s

legislative record in the field of non-proliferation and deserves to be understood both in terms of its substance and the process that produced it.

This article provides a legislative history of the NPPA, based in part on the author's firsthand experiences. This history pays special attention to explaining the reasoning behind the sanctions provisions of this legislation and demonstrating the strong bipartisan support for these provisions. The article then critiques two of the major objections to sanctions: that they do not work and are too inflexible. Finally, the article reviews recent developments in US policy and proposes an alternative way to move forward that recognizes the valuable contribution sanctions can make to strengthening nonproliferation norms.

OVERVIEW OF THE NPPA

The NPPA's significance largely derives from the breadth of its substantive provisions. The law both strengthened America's commitment to the goal of nonproliferation and sharpened (and expanded) the tools available to the president to pursue that goal, as illustrated in the following highlights.

- The law increased US penalties for the detonation of nuclear explosive devices by non-nuclear weapon states and structured the initial US response to the May 1998 nuclear tests in India and Pakistan.¹
- It extended US statutory sanctions against the proliferation of nuclear explosive devices to apply to transfers of components and design information for such devices.²
- It required the president to for-

bid US government purchases from persons or entities that knowingly contribute to nuclear weapons proliferation, including via the acquisition of unsafe-guarded special nuclear material (plutonium and highly enriched uranium).³

- It prohibited the US Export-Import Bank from providing loans or loan guarantees to finance transactions involving any country that has willfully aided or abetted any non-nuclear weapon state to acquire any nuclear explosive device or unsafeguarded special nuclear material.⁴

- It required the secretary of the treasury to direct all US executive directors in international financial institutions "to use the voice and vote of the United States to oppose" any use of the institution's funds that would promote the acquisition of unsafeguarded special nuclear material or the development, stockpiling, or use of any nuclear explosive device.⁵

- It outlawed US arms sales to countries that are in "material breach" of their binding nonproliferation commitments to the United States.⁶

- Amid worries about "loose nukes" and black market nuclear deals involving materials from the former Soviet Union and elsewhere, it amended antiterrorism legislation to authorize tough sanctions against the proliferation of nuclear explosive devices to individuals or groups.⁷

- It amended past statutory exemptions created just for Pakistan so that it will be treated just like any other country when it comes to violations of US law against nuclear weapons proliferation.⁸

- It defined for the first time in

American law the term "nuclear explosive device," a term that has guided US nonproliferation efforts for half a century but that had never been defined.⁹

- It identified 24 specific reforms that were needed to improve the system of safeguards implemented by the International Atomic Energy Agency (IAEA), many of which have been successfully pursued by the Clinton administration.¹⁰

The NPPA promoted all of these objectives without discriminatory country exemptions, references to "rogue nations," threats of military force, massive new investments of public funds, nor even an acrimonious partisan battle. The bill passed the Senate on four occasions, each time by a unanimous voice vote.

THE ROAD TO ENACTMENT

Major national legislation seldom emerges overnight, and the NPPA is no exception to this rule. Although the effort nearly fell through on several occasions, the legislative history will show that this was never because of objections to the goals of the NPPA, including the goal of expanding sanctions.

Senator Glenn Introduces S. 1128

The legislative history of the NPPA spans a period of more than six years, beginning on May 22, 1991, when Senator Glenn introduced the "Omnibus Nuclear Proliferation Control Act of 1992" (S. 1128). No specific event triggered the introduction of this bill. It was not drafted by lobbyists or ghost-written by anyone in the Executive branch. It emerged as a product of

several factors that substantially influenced both its timing and its content.

One of the original purposes of this bill was to require the president to ban US government procurements from individuals or companies that had contributed to the proliferation of nuclear weapons. Congress had earlier provided such authority to the President with respect to missiles¹¹ and had passed legislation to do so with respect to chemical and biological weapons (CBW).¹² Other contextual factors included: (a) the imposition in October 1990 of nuclear sanctions against Pakistan, which had previously been postponed via five presidential waivers between 1982 and 1990;¹³ (b) the revelation of a massive nuclear weapons program in Iraq (a country with full-scope IAEA safeguards and a party to the Treaty on the Non-Proliferation of Nuclear Weapons, or NPT) after its withdrawal from Kuwait in early 1991; (c) the growing awareness that Iraq had succeeded in acquiring nuclear-related equipment and technology and dual-use goods from the West, including the United States;¹⁴ and (d) persisting concerns over Chinese nuclear and missile assistance to Pakistan, Iran, and other nations.¹⁵

On June 14, 1991, Senator Glenn wrote a letter to the chairman of the Senate Foreign Relations Committee (SFRC), Senator Claiborne Pell (D-RI), to seek his cosponsorship of S. 1128. In this letter, Senator Glenn described the context of this legislation: “The latest war in the Gulf, and more recent reports about continuing risks of nuclear proliferation in the Middle East, South Asia and the Korean peninsula, point to an urgent need for additional efforts to

halt the spread of these weapons of mass destruction.”¹⁶

Given such a context, it is not surprising that S. 1128 attracted considerable bipartisan interest, as is illustrated by its list of official cosponsors (in the order they appeared on the bill as reported out of SFRC): Senators Alfonse D’Amato (R-NY), Jeff Bingaman (D-NM), Albert Gore (D-TN), Tom Harkin (D-IA), Trent Lott (R-MS), Claiborne Pell (D-RI), Jesse Helms (R-NC), Tim Wirth (D-CO), John Kerry (D-MA), Dennis DeConcini (D-AZ), Arlen Specter (R-PA), Alan Cranston (D-CA), Paul Simon (D-IL), and James Jeffords (R-VT). It was this strong and consistent bipartisan support—especially from the Senate Committee on Foreign Relations and, ultimately, from the Executive branch—that lay the political foundation needed to enact this legislation.

In introducing the bill, Senator Glenn stated that this legislation “will strengthen America’s commitment to the goal of preventing the global spread of nuclear weapons.” After noting that US sanctions laws had recently been strengthened against the proliferation of missiles and chemical and biological weapons, Senator Glenn cautioned that “We appear to be approaching a point where our laws may be more draconian against missile or CBW-related violations than for illicit sales of H-bomb or other nuclear weapon-related technology, equipment, or materials.” He emphasized that nuclear proliferation “deserves a higher status on our list of priorities than it has achieved in the past.”¹⁷

Glenn’s remarks demonstrated his confidence in America’s continuing ability to lead the world in

deepening the global nonproliferation norm. He posed, for example, two related questions: “if our nonproliferation laws were limited as the critics would recommend—if we craft legislation that is simply a least common denominator of all the world’s export control and sanctions legislation—would the world be a safer place?”; and “if America heeded this argument that all controls must be uniformly multilateral before we will agree to apply them, where would the international nuclear nonproliferation regime be today?”¹⁸ He then cited examples where US unilateral initiatives gradually evolved into multilateral norms (e.g., the trigger lists of the Nuclear Suppliers Group and the requirement for full-scope IAEA safeguards as a condition for civil nuclear cooperation). In underscoring the need for national initiative, Senator Glenn summarized a basic theme of his proposed legislation:

What some people call unilateralism, I call leadership. It is in this spirit that I introduce legislation today to rekindle America’s determination not just to condemn nuclear proliferation—or to manage it—but to prevent it by making it a very, very costly enterprise to individuals or groups that insist on putting profits ahead of national and international security.¹⁹

Senator Glenn emphasized that America’s “nuclear nonproliferation legislation has remained essentially static since 1978 while the nature of the threat has continued to grow.” His proposed solution to this problem consisted not of a radical departure from existing precedent, but an incremental adjustment of some weak laws to the needs and conditions of the contemporary era.

It is noteworthy that the original

bill did not contain any new sanctions for nuclear detonations, nor did it contain specific new statutory language concerning the imposition of sanctions for giving financial assistance to proliferation. The bill did include a ban on US imports produced by foreign entities that engaged in proliferation-related activities, but this ban was later removed due to a parliamentary requirement for such prohibitions to originate in the House of Representatives.

Despite criticisms of “inflexibility” that would later be directed against this legislation, the bill contained presidential waiver authority over the government procurement ban,²⁰ a procedure for the president to terminate such sanctions after a 12-month period on certain conditions,²¹ several types of commodities that constitute “Exceptions” from the sanctions,²² and presidential authority to delay the imposition of a sanction to allow for consultation with a foreign government.²³

The Issue of Bomb Components and Designs

In an amendment to the Foreign Assistance Act, the bill also proposed adding as a sanctionable offense the transfer of “any component or design information specially designed or prepared for use in such a [nuclear] device.”²⁴ The taboo against such transfers was so strong that the bill favored placing the new sanctions into the same section of the Foreign Assistance Act that dealt with nuclear detonations: in both cases, sanctions would not be subject to a presidential waiver.²⁵ There were several considerations behind this tough provision.

First, the new prohibition was fun-

damentally consistent with basic international norms—Article I of the NPT expressly requires the nuclear weapon state “not in any way to assist” any non-nuclear weapon state to acquire the bomb. US policy has long recognized that either a nuclear detonation or a transfer of key bomb components or a bomb design would have profound implications for international security and the global nonproliferation regime. The notion that such activities could be undertaken without cost or even with palpable benefits would, in the eyes of many in both Congress and the Executive, constitute a virtual invitation to proliferation.²⁶

Second, the possibility that bomb components or design information might someday be transferred to a non-nuclear weapon state was not based on casual speculation. On June 22, 1984, the *Washington Post* reported that US officials had “some evidence” that “suggested China had provided Pakistan in 1983 with a bomb design.”²⁷ On December 12, 1982, a UPI wire report citing a British source claimed that “Pakistan tried—without success—to buy from Britain and Argentina highly machined steel spheres used only for the core of a nuclear weapon.”²⁸

Third, Pakistani government officials had—virtually ever since the enactment of the so-called “Pressler Amendment” to the Foreign Assistance Act in 1985—sought to distinguish between possession of parts of a nuclear explosive device and possession of a device itself.²⁹ Senator Glenn’s proposal sought to eliminate any ambiguity about America’s position on this issue—it sought to establish that the United States would treat the transfer of such items as an act of proliferation requiring

the most severe sanction, as severe as if the transfer had involved an assembled weapon.³⁰

Actions by the SFRC

On October 17, 1991, the SFRC held a hearing to receive testimony from Senator Glenn on S. 1128.³¹ A staff memo sent to committee members before this hearing summarized the bill as follows:

S. 1128 applies to nuclear proliferation some of the same approaches used by the Foreign Relations Committee in its chemical weapons legislation, the ‘Chemical and Biological Weapons Control and Warfare Elimination Act of 1991.’ The purpose of the bill is to create disincentives for the illicit international sales of sensitive nuclear technologies at the same level as the chemical weapons bill creates for chemical and biological weapons.³²

Senator Glenn offered his own summary in his testimony before the Committee:

In a nutshell, the bill has one fundamental purpose: to take the profits out of proliferation. All of these recent sanctions bills are grounded on what I call the supply side of proliferation. They recognize that proliferation cannot be attacked by only looking at countries that are secretly building bombs. Instead, we need to attack the actual incentives that motivate suppliers to meet corrupt demands from around the world. My goal is to send an unmistakable signal to any would-be supplier of an illicit nuclear program: if you knowingly sell to such a program after enactment of this law, you can forget about doing business in the United States or with Uncle Sam.³³

During the questioning, although additional detonation sanctions were not present in S. 1128 as introduced, Senator Pell asked Senator Glenn if existing sanctions against the “use” (detonation) of nuclear weapons “should be toughened.” Senator Glenn replied that “We could examine that. It was my opinion that that was pretty well covered already. It would not hurt to repeat it here, of course. But we felt that was reasonably well covered already.”³⁴

On the issue of flexibility, Chairman Pell noted that the bill “mandates certain actions on the part of the administration, [and that] the administration does not like to mandate, so they will undoubtedly be negative toward this legislation.” Senator Glenn responded by noting a “less than forceful attitude on the enforcement of laws we already have on the books,” and cited some examples involving past waivers on Pakistan’s behalf.³⁵ He added that he hoped the administration “would take this seriously” and “that it would use these strengthening pieces of legislation to help take a tougher line on nuclear proliferation around the world.”³⁶

Glenn also urged that future US nonproliferation efforts “be built on the existing framework that we have right now through the UN and through IAEA.”³⁷ Citing the recent experience in Iraq and the growing international awareness of the potential consequences of proliferation, he concluded that “perhaps we also could encourage the administration to negotiate through the UN and see if there is not more willingness to use sanctions against countries. We have held off, I think, too much in that area, and that is a real weapon.” Senator Joseph Biden (D-

DE) similarly stated at this hearing that “I think the new front line troops we are going to need to fight this new threat, this emerging threat, will have to be the inspectors from the UN.”³⁸

The decision to add provisions to toughen sanctions emerged after these hearings, as a bipartisan initiative. On November 21, 1991, SFRC staffers wrote a background memorandum to other committee staff about a committee amendment to S. 1128 that would be jointly offered by Senators Claiborne Pell and Jesse Helms.³⁹ The memo described this amendment, relating to penalties for nuclear detonations and transfers of bomb parts and design information, as follows:

... it goes beyond an aid cut-off to set forth eight very stiff sanctions against a misbehaving country. These sanctions are stiffer than those in the chemical act because sanctions against nations playing around with nuclear weapons should be as strong as possible. [...] In this bill, the import prohibitions would be total and mandatory. Finally, imposition can be delayed for 30 days for Congressional-Executive Branch consultations, after which the sanctions can be lifted only by joint resolution or other law.

The next day, the full Committee voted 17-0 in favor of the Pell-Helms amendment and referred the bill favorably to the floor with the strengthened sanctions.⁴⁰

Enter the Financial Sanctions

The original Glenn bill did not contain any specific sanctions against firms or individuals that finance proliferation-related activities, though it did clarify that

proliferation would have definite financial consequences, particularly for those nations that would face US opposition to new loans from multilateral lending agencies. Yet as the year progressed, it became increasingly clear to many in Congress that greater attention must be paid to this particular form of proliferation “assistance.” The news media had been reporting several stories in this period concerning the role of banks and other financial institutions in facilitating the proliferation of various weapons of mass destruction and their delivery vehicles. Citing “court records, bank documents and interviews,” the *Washington Post* reported on August 11, 1991, that “Pakistan funded a clandestine program to acquire materials for a nuclear bomb during the 1980s through a global banking system that makes it relatively easy to finance cross-border smuggling of sensitive nuclear technology.”⁴¹

In October 1991, the deputy leader of the IAEA inspection team in Iraq, David Kay, testified before the SFRC that “Financial transactions did take place across borders, there’s no doubt about it, as a means of disguising where the equipment was coming from.” One committee member, Senator Hank Brown (R-CO), observed: “To handle the foreign exchange, coordinate the insurance, review the bill of lading, to finance it—the range of services that are critical—that falls through the cracks.”⁴²

A few years later, Senator Glenn asked then-CIA director James Woolsey how Pakistan was able to fund its bomb program. Mr. Woolsey responded:

Loans and grants from both bilateral and multilateral aid agencies free money for

Pakistan to spend on its nuclear program. Since 1980, Pakistan has received a total of about \$19 billion in aid from bilateral and multilateral donors and lenders. About 14 percent ... were untied loans and grants from the International Monetary Fund, the United States, Japan, the European Community, Arab countries, and others. Theoretically, these untied funds helped finance civilian imports, freeing an equivalent amount of funds to spend on the nuclear program.⁴³

As reports along these lines continued to circulate in Congress and the media, the cosponsors of S. 1128 deliberated using the bill's US government procurement sanctions as a model for constructing similar sanctions against individuals or companies that willfully provide financial assistance for proliferation. These deliberations involved members and staff of the Committees on Governmental Affairs, Foreign Relations, and Banking, Housing, and Urban Affairs, as well as officials from the Treasury Department.

On April 9, 1992, Senators Pell, Helms, and Glenn offered a substitute for S. 1128 that incorporated the SFRC's earlier committee amendment, some new language intended to accommodate certain administration concerns, an exemption for humanitarian aid, and a new section containing sanctions on financial institutions modeled largely after the government procurement sanctions.⁴⁴ According to Senator Pell, "The Senator from Utah [Jake Garn] and his staff were helping in making sure that this provision is both strong and workable."⁴⁵ Similarly, Senator Jesse Helms stated with respect to these sanctions, "Quite frankly, this legislation de-

veloped out of the BCCI hearings held by the Senate Foreign Relations Committee in the summer of 1991. [...] These are severe sanctions, not a mere slap on the wrist. [...] I repeat, these [financial] sanctions are intended to be severe."⁴⁶ The cooperation of Republicans Garn and Helms and Democrats Pell and Glenn shows that the idea of sanctioning private entities reflected a bipartisan consensus.

Negotiations Over the Waiver Authority

During the debate on April 9, 1992, Senator Pell noted that the administration had sought a presidential waiver authority for transfers of bomb components and design information, but that the bill's supporters "were fearful of any waiver that would cause miscreant nations to believe they could fool around with the bomb and escape penalties."⁴⁷

He then described a "mutually satisfactory" compromise that was reached: bomb components would be divided into two categories, those that were "known by the transferor to be necessary to the recipient's completion of a nuclear explosive device" and those that are determined by the president to be "important to and known by the transferring country to be intended by the recipient state for use in the development or manufacture of any nuclear explosive device."⁴⁸ Under the compromise, the president would be granted waiver authority for sanctions involving the latter, which could be exercised only pursuant to a certification that the imposition of the sanction "would have a serious adverse effect on vital United States interests." As for the former, Senator Glenn stated that "transfers of such critical bomb parts or design

information to a non-nuclear weapon state would be treated under US sanctions law as equivalent to the transfer of an actual device."⁴⁹

Later that day, the Senate approved S. 1128 as amended by a unanimous voice vote. Senator Glenn issued a press release explaining "today, by passing my legislation, the Senate has moved forward with a strong bipartisan plan of action to combat the kingpins of illicit international nuclear commerce. Our goal is to take the profits out of proliferation." He added that "Illicit nuclear suppliers may not care about international security, but they surely will recognize a threat to their pocketbooks. My bill, in short, speaks a language they can understand."⁵⁰

Compromises with the Bush Administration

The Bush administration issued its first official views on S. 1128 (as reported by the SFRC) on March 20, 1992, three weeks before the full Senate vote.⁵¹ The administration's statement expressed support for "the objective of S. 1128—to prevent the proliferation of nuclear explosive devices and unsafeguarded special nuclear material" but noted that "the current bill contains several objectionable provisions that need to be modified or deleted before the Administration can support the legislation." The administration's objections centered on the broad scope of goods covered by and mandatory nature of sanctions, and some perceived impingements on the president's constitutional authority.

Over the next month, most of these objections were addressed and the changes incorporated into the revised version of the bill that passed

on April 9, 1992. On July 27, 1992, the Committee on Governmental Affairs received a faxed copy of the administration's new views on S. 1128.⁵² The fax stated that the bill "represents a reasoned effort to complement the existing nonproliferation regime with new restrictions. [...] the Glenn bill complements existing nonproliferation legislation without hindering successful multi-lateral initiatives...." Significantly, with respect to the new sanctions concerning nuclear detonations and transfers of bomb parts and design information, the administration statement said that the bill "provides for appropriate waivers."

Overcoming Obstacles from the House

With the 102nd Congress coming to a close by the end of summer 1992, supporters of S. 1128 recognized that an alternative vehicle might be needed to enact this legislation. Problems then arose with the House on this question. However, the problems were more procedural than substantive, relating primarily to matters of committee jurisdiction. Essentially, the House Foreign Affairs Committee (HFAC), which was seeking to enact a new Export Administration Act (EAA) in 1992, wished to incorporate the terms of S. 1128 into the EAA, the principal law governing exports of dual-use goods. Because of the HFAC's opposition to other options, supporters of S. 1128 could not obtain enactment of the bill as stand-alone legislation nor attach it to any vehicle other than the House's EAA bill (H.R. 3489).

There are several reasons why backers of S. 1128 did not want the legislation to be placed in the EAA.

On January 27, 1992, this author asked Raymond Celada, at the time a senior specialist in American Public Law in the Congressional Research Service, for a legal opinion on the implications of placing this legislation into the EAA. Two days later he submitted a memo containing the following reasoning:

Symmetry and logic to a certain extent may commend such an approach, particularly if it is assumed that S. 1128 is fundamentally an export control measure. The latter, however, does not appear to be the case. The legislation [the EAA] does not control nuclear related exports; these find expression in a variety of other laws. [...] This change and the recommended change to bring the banking institutions within the authority of the International Banking Act implies a fundamental parliamentary shift, namely, the erosion of the Senate Foreign Relations Committee's jurisdiction in these matters and their eventual transfer to the Senate Committee on Banking, Housing, and Urban Affairs. [...] In addition to arguably extending the Banking Committee into alien terrain, specifically, the nuclear regulatory area heretofore largely the domain of the Committee on Foreign Relations and Governmental Affairs, among others, it arguable takes the Banking Committee into the core Foreign Relations Committee areas....⁵³

On the eve of the adjournment of the 102nd Congress, backers of S. 1128 were forced by circumstance to reach a compromise with the HFAC. On October 5, 1992, the "Nuclear Proliferation Prevention Act of 1992 (NPPA)"—a renamed and slightly revised version of S. 1128—was added in conference as

a new Title III of H.R. 3489, the House's EAA reauthorization bill.⁵⁴ The measure also included several provisions for strengthening IAEA safeguards that Senator Glenn had proposed separately in S. J. Res. 216, which he had introduced on October 17, 1991.

Due to HFAC concerns about the Executive's repeated resort to the International Emergency Economic Powers Act (IEEPA) to continue export controls in the absence of congressional reauthorization, the Senate backers of S. 1128 agreed to a House demand to remove a provision that would have added the proposed nuclear sanctions to the broad presidential sanctioning powers under the IEEPA. This removal thus did not imply a lack of support for sanctions against those who aid proliferation.

Though the Senate approved this conference report by voice vote, the House never passed its own report due to serious disagreements inside the House over other matters not relating to the sanctions bill. This particular NPPA bill therefore died with the expiration of the 102nd Congress, despite having passed the Senate three times, each time by a unanimous voice vote.

The Struggle Continues into the 103rd Congress

On May 27, 1993, Senator Glenn resurrected the final amended version of S. 1128 and re-introduced the bill in the 103rd Congress, with its original title, the "Omnibus Nuclear Proliferation Control Act" of 1993.⁵⁵ The new bill, now numbered S. 1054, also included a non-binding "sense of the Congress" resolution identifying 27 proposed reforms to strengthen IAEA safeguards, a pro-

vision that built upon S. J. Res. 216, which he had introduced in the earlier Congress. The work on this bill would require close consultation with a newly elected administration.

In explaining the new bill, Senator Glenn emphasized that past sanctions laws, which relied upon threats to cut off US foreign aid, were no longer either credible or adequate. He argued that “The denial of foreign aid and nuclear cooperation—once a powerful sanction—may well (with low levels of foreign aid and the continuing stagnation of the nuclear power industry) decline in value as a means to curb proliferation in the 1990s.”⁵⁶ Indeed, this logic pervaded the entire bill—the emphasis throughout was upon updating America’s nuclear sanctions laws to increase their value in a time of declining foreign aid.

On May 28, 1993, Senator Glenn wrote a “Dear Colleague” letter to his fellow senators urging them to support his new bill. He urged his colleagues to recall that:

Over the last decade, America has learned some hard lessons about the way we have dealt with clandestine bomb programs around the world and few observers today would dispute the relevance here of the adage about an ounce of prevention being worth many pounds of cure—unfortunately, in the cases of Iraq and Pakistan, our system of export controls and sanctions fell far short of even that single ounce of prevention. That system needs an overhaul.⁵⁷

He was not alone in coming to this conclusion. On July 20, 1993, Senator Glenn received a letter from the Department of State expressing the views of the Clinton administration on S. 1054. The letter, signed by As-

sistant Secretary of State Wendy Sherman, stated that “We have urged prompt passage of S. 1054 so that the President can sign it into law [... and] we will continue to cooperate in efforts to bring S. 1054 into law.”⁵⁸

The same day, Assistant Secretary Sherman wrote to SFRC Chairman Pell. Her letter stated the following about this bill:

... it would extend existing country sanctions for the transfer of a nuclear explosive device to the transfer of key nuclear weapons components or design information. We believe these provisions will contribute significantly to the nuclear nonproliferation regime and will complement the Administration’s efforts to prevent the proliferation of nuclear weapons. [...] We urge swift passage of this important piece of legislation....⁵⁹

On January 31, 1994, Senator Glenn introduced the NPPA as an amendment to H.R. 2333 (the Foreign Relations Authorization Act for Fiscal Years 1994 and 1995), which was then on the Senate floor.⁶⁰ He noted that the amendment contains a new “sunshine provision to require the public disclosure of nonproprietary data on United States nuclear-related exports, basic information about the implementation of United States nuclear sanctions policies, including demarches the United States has both received and sent relating to nonproliferation, and a summary of the progress of the former Soviet Republics ... in implementing their nonproliferation commitments.”⁶¹ Shortly after, the bill passed the Senate—representing the fourth time this proposed legislation had passed the Senate by voice vote.

A problem arose once again with

the HFAC, however, which insisted on including the text of S. 1054 in its new bill to reauthorize the EAA (H.R. 3937), rather than passing it as a separate title in the Foreign Relations authorization bill, H.R. 2333. When the House and Senate conferees on the latter bill met in late April 1994, they reached the following agreement. The House would consent to leaving the Glenn nuclear sanctions amendment in H.R. 2333, but only on condition that the measure would contain a sunset clause requiring its termination upon the enactment of the Foreign Relations Authorization Act for the following fiscal year. The basic idea was that the House wanted an opportunity to pass the sanctions on their EAA bill—if that bill failed to become enacted, the House conferees (specifically Representatives Sam Gejdenson [D-CT] and Toby Roth [R-WI]) agreed not to oppose the future repeal of the sunset clause.

The purpose of this clause was not to terminate the sanctions authorities, since the House did not object to the Glenn proposals, but simply to give the House an opportunity to pass them on its preferred legislative vehicle. The Conference Report for H.R. 2333 therefore included both the text of S. 1054 (now renamed the NPPA) as title VIII and a new section 851 containing the statutory sunset clause.⁶² This Report was soon thereafter approved by both House and Senate and signed by President Clinton into law on April 30, 1994.

In fulfillment of their half of this understanding, the supporters of the House bill to reauthorize the EAA, H.R. 3937, included the NPPA as Title II of that bill, and reported it out of the HFAC on May 25, 1994.

When the bill was referred to the House Committee on Armed Services, however, it encountered strong opposition on grounds not related to the nuclear sanctions. The dispute centered instead on philosophical differences between the committees about whether or not to liberalize export controls on dual-use goods.⁶³ As this dispute was never resolved, the 103rd Congress adjourned *sine die* in late 1994 without any further legislative action on H.R. 3937.⁶⁴

Repealing the Sunset Clause

So, although the NPPA had finally been enacted into law on April 30, 1994 (it officially went into effect on June 29, 1994), the entire law was living on borrowed time because of the sunset clause. And since H.R. 3937 failed to become enacted in 1994, supporters of the NPPA got to work to repeal the sunset clause, a stance the HFAC had indicated it would not oppose (as discussed above).

The 104th Congress, however, was quite different in composition from its predecessor. The elections of 1994 had swept in Republican majorities in both houses of Congress and one of the top goals of the new majority on the relevant foreign affairs committees was to consolidate and reduce the size of the foreign policy establishment in the Executive.

On May 3, 1995, Rep. Benjamin Gilman (R-NY), the new chairman of the newly-named House International Relations Committee, introduced the “American Overseas Interests Act of 1995” (H.R. 1561), which, among things, sought to abolish the Arms Control and Disarmament Agency. Section 2604 of this

bill contained a repeal of the NPPA’s sunset clause.

On January 30, 1996, Senator Glenn wrote a letter to the Senate conferees on H.R. 1561 and urged them to back the House’s language to repeal the NPPA’s sunset clause. On March 8, the conferees issued their Report and the resulting bill contained a new section 1613, which repealed the sunset clause.⁶⁵

Numerous unresolved differences between the administration and the new Congress over this foreign policy reorganization proposal, however, led President Clinton to veto the bill on April 12, 1996. So once again, the future of the NPPA was in jeopardy by the sunset clause. The NPPA’s sunset clause was finally repealed by section 157(a) of H.R. 3121, a bill dealing with certain reforms in foreign defense assistance. With the enactment of Public Law 104-164 on July 21, 1996, the six-year legislative saga of the NPPA had come to an end. Although the sanctions provisions of this Act were sometimes placed in doubt, this was always due to unrelated disputes or procedural matters. This legislative history has shown that extending the scope of sanctions on proliferation-related activities enjoyed strong support in both parties, in both chambers of Congress, and in the Executive branch. Now all that lay ahead was implementation.

PRELIMINARY ASSESSMENT

While it offers no panacea for chronic proliferation threats, the NPPA has created some powerful tools for US diplomacy and raises the priority of nonproliferation in the policymaking process. Yet the In-

dian and Pakistani nuclear tests in May 1998 have already prompted many criticisms of this law, and unfortunately some of the most common are also among the most questionable. Two in particular deserve further attention.

“Sanctions Don’t Work”

Perhaps the most misplaced criticism of the NPPA—and sanctions in general—is the popular *ipse dixit* that “sanctions don’t work.”⁶⁶ The essence of this criticism is that the law “failed” to “prevent” India and Pakistan from testing. Using this standard, one would judge effectiveness simply by observing whether or not the law was ever violated. This is not a standard, of course, that the United States applies to its other laws. Laws against murder, drunk driving, and narcotics trafficking are violated daily, yet society has still seen fit to retain them.

There are many other problems with this assertion that “sanctions don’t work.” Typically proponents of this view are guilty of the same sin they accuse advocates of sanctions of committing: they offer no objective standard against which to measure the success or failure of the law, nor do they offer such a standard for assessing the effectiveness of the alternatives to sanctions. For example, if it were the solitary goal of the NPPA’s detonation sanctions to guarantee absolutely—by the sheer force of their deterrent effect—that no state would ever test again in world history, then the law failed to achieve that goal. Applying this standard, even Senator Glenn conceded that “the sanctions did fail in their primary purpose, which was to prevent a test in the first place.”⁶⁷

Yet there is no evidence whatsoever that anybody—surely not the authors of any of these laws—ever intended these laws to constitute a perfect or permanent solution to the global nuclear proliferation threat. Nor did anyone assume that the requirement for mandatory sanctions for nuclear detonations would perse—i.e., in the absence of other diplomatic initiatives—succeed in preventing such events from occurring. Supporters looked upon sanctions as a tool to reduce significant proliferation threats, not as a miracle cure. At best, one can discern in deliberations over this legislation an intent to reduce the *probability* of proliferation and to attenuate its effects. And if these sanctions “work” in achieving even these more prosaic ends, such an accomplishment would certainly be worthwhile.

Also, the NPPA’s critics frequently ignore the element of time. US sanctions for nuclear detonations have been mandatory for 18 years. In that time, only two countries have violated this law, hardly itself compelling evidence of a failed law. It takes time for laws to work, especially if the intention is to alter behavior. Under Secretary of State Thomas Pickering once observed that “diplomacy isn’t instant coffee.”⁶⁸ Neither is the law. And speaking specifically about the recent tests, Secretary of State Madeleine Albright has stated that

The nuclear tests in South Asia present us with a fateful choice. Some now say that nuclear nonproliferation is doomed and the sooner we accept that, the better off we’ll be. Because a standard has been violated, they would have us accept a world with no standards at all. I say that is dangerous nonsense. Efforts to

halt the spread of nuclear weapons do not come with a guarantee. But to abandon them, because they have been dealt a setback, would be a felony against the future.⁶⁹

Proponents of the view that “sanctions don’t work” might also take a closer look at the views of Indian officials, who freely admit that calculations about international reactions played a major role in discouraging India from testing nuclear devices on more than one occasion. Former Indian President Venkataraman once stated that “All preparations for an underground nuclear test at Pokhran had been completed in 1983 when I was the defence minister. It was shelved because of international pressure and the same thing happened in 1995.”⁷⁰ And since nobody is omniscient, we cannot know for sure exactly how many other countries made exactly the same calculations, or how many additional tests India itself may have chosen not to conduct for the same reason.

One cannot reasonably expect current Indian government officials to admit publicly that sanctions are imposing heavy costs for India’s bomb program. Such constraints do not necessarily apply, however, to opinions outside of government. “No matter what the Government of India says,” according to a recent article in *India Today*, “the technology denial regime has been quite extensive and effective and is responsible in a great measure for the massive shortfall in the nuclear power programme’s planned generation of 10,000 MW.”⁷¹

Again, assessments of sanctions concern questions of probability. Would the relaxation or outright

elimination of “unilateral” US sanctions against nuclear detonations make such events any less likely to occur in the years ahead, or instead make them more likely? Would multilateral sanctions be preferable? Of course, but if multilateral sanctions are not universal, are at least some penalties better than none? How would *reducing* the political, diplomatic, and economic costs of such detonations serve to *discourage* leaders in South Asia or elsewhere from engaging in such tests? How can the United States encourage other nations to impose sanctions if it is not willing to impose them itself, especially if the reason is parochial interests that have nothing to do with nuclear weapons?

For some critics, “engagement” is the only alternative to sanctions. But how are we supposed to measure the success of “engagement” as a non-proliferation tool? And if “engagement” fails, as it quite obviously did in Pakistan in the 1980s, what next?

This double evaluative standard—where rigorous performance assessments would be required of sanctions but not of their alternatives—is quite apparent in some recently proposed legislation. On November 7, 1997, for example, Senator Richard Lugar introduced a bill called the “Enhancement of Trade, Security, and Human Rights through Sanctions Reform Act” (S. 1413), which would not only force the termination of all so-called “unilateral economic sanctions” after they have been in force for two years, but subject all such sanctions—both before and during their implementation—to a rigorous process of review as to their effectiveness.⁷² This legislation would require multiple reports from the president,

the Congressional Budget Office, the secretary of agriculture, the United States International Trade Commission, as well as public hearings and a mandatory delay prior to implementation. The president's report would specifically have to determine "whether the achievement of the proposed sanction outweighs any likely costs to United States foreign policy, national security, economic, and humanitarian interests, including any potential harm to United States business, agriculture, and consumers, and any potential harm to the international reputation of the United States as a reliable supplier of products, technology, agricultural commodities, and services."⁷³

The application of such a standard to the sanctions under the NPPA, however, would be particularly problematic. This is not just because of the inherent difficulty of "weighing" such intangible goals as delegitimizing nuclear tests, reinforcing a global nuclear taboo, and demonstrating US leadership against the goal of avoiding "any potential harm to United States business," but also because such rigorous evaluative standards would not also be required vis-à-vis the alternative policy of engagement. Is the intent of this legislation to ensure that "sanctions work," or just to make it more difficult for the president to use the sanctions tool?

Critics of sanctions, and critics of the NPPA's sanctions in particular, have not yet offered any satisfactory response to two additional questions: (a) If sanctions don't work, what would work better?; and (b) What is the evidence that supports such a claim?

Both the threat and the implementation of sanctions have advanced US nonproliferation goals in both India and Pakistan, whether they be measured in (a) the length of time it took for such tests to finally occur, (b) the costs of having to undertake such tests quickly, underground, and with elaborate measures of deception, or (c) the message US actions have sent to the world community about the America's commitment to defend both global ideals and its own national security interests. The sanctions are in all likelihood a key reason explaining why neither country has proceeded with additional tests.

Laws "work" or do not work only in relation to the goals they seek to achieve. The goals of nuclear nonproliferation are both diverse and complex, surely more complex than the mere pursuit of a global non-nuclear nirvana. One can find several explicit or implicit goals in the legislative history of all of America's nonproliferation laws, including: strengthening the global nonproliferation regime; signaling America's determination to oppose proliferation wherever it may occur; expanding the time required to develop such weapons or to field an arsenal; degrading the qualitative characteristics of such weapons by withholding needed technical assistance; expanding the economic and opportunity costs of pursuing such weapons; and the vaguest goal of all, delegitimizing acquisition. Sanctions have their problems in achieving all of these goals, but so do the alternatives. At best, sanctions "work" when they are applied with strong political will, allowed an honest period of time for implementation, and reinforced by bilateral and multilateral diplomatic initiatives.

They offer no quick fix. But they can and often do contribute to slowing proliferation.

"Sanctions Are Inflexible"

The nuclear tests in South Asia have opened up a new debate in Congress over the contents of the NPPA, and re-kindled a much older debate over the value of sanctions per se as a tool of US foreign policy. With respect to the former, the debate has focused on whether the law allows the President sufficient "flexibility" to pursue the objectives of the law and other foreign policy goals.

Secretary of State Madeleine Albright, for example, has argued that "sanctions that have no waivers and don't provide any flexibility make it very difficult to carry out a foreign policy that allows us to do the kinds of things that we're trying to do."⁷⁴ Addressing the NPPA's nuclear detonation sanctions, she has claimed that

The very tough sanctions that have now been put into place against India and Pakistan is [sic] the Glenn Amendment which has no waiver authority and no flexibility. It's all sticks and no carrot [...] sanctions that have no flexibility, no waiver authority, are just blunt instruments and diplomacy requires us to have some finesse.⁷⁵

This statement begs two questions: why did Congress make the sanctions so tough, and are they really so inflexible? Answers are found in the historical roots of this legislation. Mandatory sanctions for nuclear detonations were not, after all, an innovation of the NPPA. As originally authored by Senator Glenn in 1977, US nuclear detona-

tion sanctions authorized the president to waive such sanctions on national interest grounds.⁷⁶ For reasons that will be discussed below, Congress repealed that authority in 1981 and sanctions have been mandatory ever since for both detonations and transfers of nuclear explosive devices to non-nuclear weapon states. The NPPA thus broadened but did not create these mandatory sanctions. This history is important because it documents longstanding congressional support for firm US actions on behalf of one of the most fundamental of all global nonproliferation norms.

So why did Congress make the sanctions mandatory in 1981? Speaking in October 1981 with reference to South Asia and a Reagan administration plan to resume US aid to Pakistan despite its continued violation of US nonproliferation laws, Senator Glenn addressed the waiver issue as follows:

Mr. President, I submit that the nuclear records of both Pakistan and India are so replete with a disregard for the strengthening of international nonproliferation efforts that even to contemplate the possibility of a Presidential waiver to allow continued economic aid and military assistance to those countries after they detonate a nuclear device is to do grave damage to our public commitment to the longstanding goal of nonproliferation, a commitment to which we have rededicated ourselves time and time again....⁷⁷

He then noted that the new administration was reviewing proposals to drop full-scope safeguards as a nuclear supply requirement and to “eliminate all these sanctions provisions of [the] NNPA. In other words, we would wind up pretty

much with a law that is a toothless tiger, to say the least.”⁷⁸

Senator Glenn specifically emphasized the need for tougher controls against nuclear detonations: “If we, Mr. President, are incapable of drawing the line at the detonation of a nuclear device, which is all this amendment proposes ... then we are incapable of ever drawing the line anywhere, I would submit.”⁷⁹ Turning to America’s global responsibilities, he argued that “The international nonproliferation regime is best served ... by an explicit statement by the US Congress rather than by some implicit understandings that may or may not be waived, based upon the past performance of this Government.” He noted that the United States had shipped nuclear fuel to India without full-scope safeguards and “did nothing, absolutely nothing” after India violated its peaceful use assurances and used US-origin nuclear materials in its 1974 nuclear explosion.⁸⁰ Such practices led many in Congress to believe that US law and policy had become *all too* flexible and accommodating with respect to nuclear weapons proliferation, a belief that was prevalent in Congress both in 1981 and in 1994.

After a 51 to 45 vote in favor of this 1981 Glenn proposal to make sanctions mandatory upon India or Pakistan if either should test, Senator Jesse Helms proposed to broaden this approach. In his words, “if any nation explodes a nuclear device and if it is receiving any kind of assistance from the United States, that aid should be cut off We simply must use whatever leverage we have in this world to encourage nations to halt the insanity of the spread of nuclear weapons.” The Senate then

approved the Helms amendment by voice vote.⁸¹

On June 14, 1998, Senator Glenn offered his own explanation why the NPPA’s detonation sanctions had to be firm: “we made it tough,” he said, “because some of the previous administrations had been sort of wishy-washy on sanctions.”⁸² He later explained the law’s lack of a waiver in the following terms: “We had rather spotty experiences with Presidents in the past and we said we were going to make this tough. [...] That was done very intentionally.”⁸³

Supporters of the Glenn/Helms language—both then and now—might well concede that sanctions for detonations and transfers of nuclear weapons *should* be “inflexible,” assuming one uses a definition of that term found in the dictionary, i.e. “of an unyielding temper, purpose, will, etc.”⁸⁴ The alternative of flexibility—i.e., “willing or disposed to yield”⁸⁵—is not necessarily a desirable quality for a credible sanctions policy. Diplomacy and flexibility are related, but not synonymous. One of America’s leading authorities on international law, Louis Henkin, has described the relationship between diplomacy and law as mutually reinforcing: “Diplomacy is ‘flexible,’ but its purpose is often to achieve ‘inflexibility,’ i.e., stability, credibility, confidence. And the law ... is one of diplomacy’s most important instruments.”⁸⁶

Though neither the law nor America’s feckless, flexible diplomacy proved to be successful in keeping Pakistan and India from testing, the critics of sanctions have yet to offer any suggestion as to what US policy initiatives would have prevented such tests. There is surely

little basis in history for one to believe that the expansion of US military cooperation or assistance would have achieved this goal.⁸⁷ Since 1980, Congress authorized the Executive to waive US sanctions on eight occasions exclusively on Pakistan's behalf, which resulted in the transfer of over \$5 billion in military and economic assistance to that country. Yet there is no evidence whatsoever that this extraordinary flexibility proved to be in any way effective in achieving the officially-stated goal of that policy—i.e., “nuclear restraint.”⁸⁸

To the contrary, Pakistan achieved its greatest nuclear achievements precisely during a period when US aid was flowing at its highest rate. In reviewing this record, former Ambassador Gerard Smith justifiably termed this practice one of “turning a blind eye to nuclear proliferation.”⁸⁹ It was flexibility, not sanctions, that did not work in this case.

Moreover, it is clearly too soon to declare that the NPPA has been a failure even with respect to the tests in South Asia. The recent sanctions and the prospect of their continuation have very likely encouraged the governments of both countries to declare their readiness to join the Comprehensive Nuclear-Test-Ban Treaty (CTBT).⁹⁰ As the *Washington Post* editorialized, “The international economic sanctions triggered by their tests surely had something to do with their decisions—especially the more dependent Pakistan's—to accept the discipline of the test ban treaty.”⁹¹ The *New York Times* has urged the US government not to lift its economic sanctions until India and Pakistan “reach additional curbs on the production

of weapons-grade nuclear material and the development and deployment of missiles capable of delivering nuclear weapons”; the paper specifically urged the President to “keep up the pressure.”⁹² The law, in short, appears to be working after all in achieving important US nonproliferation objectives, including advancing the global norm against new nuclear testing.

There are additional reasons to question Secretary Albright's claim that the NPPA has “no flexibility.” Though the law lacks a waiver for detonation sanctions, it has allowed the administration extraordinary leeway in its implementation. First, it has expressly allowed the president 30 days to delay the implementation of the sanction, a delay the president chose not to use in the case of either the recent Indian or Pakistani tests.⁹³

Second, the law itself explicitly exempts all “humanitarian assistance” from the scope of the sanctions.⁹⁴ The administration has made it clear that it intends to interpret this exemption flexibly. On June 25, the administration reportedly endorsed a new \$543 million World Bank loan to India, a loan that the *New York Times* described as “chiefly humanitarian and thus exempt” from the nuclear sanctions.⁹⁵

Third, the law exempts from sanctions any transaction subject to certain intelligence-related reporting requirements of the National Security Act.⁹⁶ Fourth, the law explicitly exempts “food or other agricultural commodities” from the scope of the sanctions under the Foreign Assistance Act and from the sanctions against bank loans to the governments of sanctioned countries.⁹⁷

Fifth, with strong administration support, Congress passed special legislation exempting other agricultural trade, medicines, medical equipment, and fertilizers from these sanctions. President Clinton signed this legislation, the “Agricultural Export Relief Act of 1998” (Public Law 105-194) into law on July 14, 1998. In October of that year, the enactment of the “India-Pakistan Relief Act”—which authorized the president to waive (without any nonproliferation preconditions) the NPPA's key sanctions on economic assistance and military training—added even more flexibility to that law.⁹⁸

Sixth, though the law requires that certain export control authorities of the EAA “shall be used to prohibit” the export of dual-use goods requiring individual licenses, the most recent regulations only prohibit the export of those items that are controlled for nuclear or missile reasons. Export license applications involving items controlled for other reasons face only a “presumption of denial,” even if they are destined to facilities that are engaged in nuclear or missile activities or to military end-users. Other licensable items will be reviewed on a “case-by-case” basis. Moreover, the regulations implementing these specific sanctions were not officially codified until six months after the tests.¹⁰⁰

All of these examples hardly constitute evidence in support of any claim that the NPPA has been “inflexible.” If anything, the law may well prove to be excessively flexible, particularly if the sanctions are lifted before India and Pakistan have committed to significant steps to roll back their nuclear weapons programs. Though firmness was de-

monstrably the congressional intent in enacting the NPPA, flexibility has in fact predominated in the implementation of this law and many other US sanctions laws.

RESPONSIBLE CRITERIA FOR LIFTING THE SANCTIONS

The NPPA's sanctions for nuclear detonations can be lifted only by the enactment of new statutory authority. The readiness of the Congress to provide such authority will be shaped significantly by the relative weight it accords to nonproliferation vis-à-vis other US national goals. Both US officials and the United Nations have put forward criteria for lifting the sanctions that would tie such a step to significant nonproliferation measures, but recent US actions appear to be conforming to the tradition of treating these standards with customary flexibility.

Though the law did not prescribe the specific criteria that would merit the lifting of sanctions in future legislation, in November 1998, Deputy Secretary of State Strobe Talbott identified two "principles" behind US nonproliferation efforts in India and Pakistan.¹⁰¹ The first was a reaffirmation of "the long-range goal of universal adherence" to the NPT. "Unless and until they disavow nuclear weapons and accept safeguards on all their nuclear activities," he stated, "they will continue to forfeit the full recognition and benefits that accrue to members in good standing of the NPT." He specifically identified this as a "crucial and immutable guideline of our policy."

The "second principle" consisted of "five practical steps" the United States would seek from both

countries:¹⁰² that they (1) sign and ratify the CTBT; (2) "refrain from producing fissile material for weapons," pending conclusion of a fissile material cut-off treaty; (3) agree to "limitations on the development and deployment of missiles and aircraft capable of carrying weapons of mass destruction," along with other unspecified "strategic restraint measures"; (4) tighten export controls; and (5) engage in regional dialogue to reduce tensions.¹⁰³

With respect to the sanctions, Talbott identified several reasons why they "were necessary" (beyond their requirement in law). Among these were that sanctions "create a disincentive" for other states to consider the nuclear option and that "sanctions are part of our effort to keep faith with the much larger number of nations that have renounced nuclear weapons despite their capacity to develop them."¹⁰⁴

The UN Security Council—with strong US support—has also identified some benchmarks that may be used in assessing the extent to which sanctions should be lifted. On June 6, 1998, it approved Resolution 1172, which (*inter alia*) called upon both India and Pakistan to refrain from deploying or developing nuclear weapons or the missiles to deliver them, and to halt the production of fissile material for such weapons.¹⁰⁵

While not sufficient in themselves to lift all sanctions and resume business as usual, these benchmarks are necessary elements of a responsible nonproliferation policy for two important reasons: they are expressly tied to global norms, which substantially broadens the potential basis for collective action, and they are precise enough to enable the determi-

nation of success or failure of policy. It will remain to be seen whether sanctions are withdrawn in response to progress in achieving these nonproliferation goals, or just withdrawn unconditionally. The record so far, however, is not reassuring that nonproliferation will remain the primary consideration in lifting these sanctions.

As described above, Congress and the Executive have already demonstrated their support for rolling back many of the existing sanctions despite the failure of both countries to satisfy any of the key standards identified either by Deputy Secretary Talbott or in Resolution 1172. On November 9, 1998, the White House announced that the president would exercise a new waiver to allow the lifting of several additional sanctions on both India and Pakistan, particularly in the areas of economic assistance, credit, and military training.¹⁰⁶ The statement identified four reasons for exercising this authority: both countries had declared a moratorium on testing, promised "to move toward" adherence to the CTBT, "committed" to strengthening export controls, and are participating in talks on the fissile material cut-off treaty.

On December 21, the White House announced that it had reached agreement with Pakistan to return the money it had paid to purchase F-16 (nuclear-capable) aircraft that had then been embargoed under the Pressler Amendment.¹⁰⁷ Under this deal, the United States would return \$324.6 million in cash, along with \$140 million in "additional goods and benefits" (unspecified). This amount, added to an IMF financial "rescue package" announced in November worth over \$5.5 billion,¹⁰⁸

plus additional funds provided on the basis of the most recent waiver, represents a massive influx of funds into a country that has shown little inclination to roll back its nuclear weapons program. This amount far exceeds the \$5 billion the US provided in military and economic aid to Pakistan between 1981 and 1990, when Pakistan passed its most significant milestones in acquiring the bomb.

Yet this largesse has not been accompanied by commensurate progress in achieving any of the concrete goals of US nonproliferation policy outlined above, particularly those with respect to non-deployment, non-weaponization, and halting production of fissile material. Recent developments are not reassuring:

- On November 17, 1998, a Pakistani newspaper claimed that Pakistan's unsafeguarded Khushab reactor had "started producing plutonium."¹⁰⁹ A month later, another Pakistani newspaper, citing the views of Dr. Ishfaz Ahmed (chairman of the Pakistani Atomic Energy Commission), reported that Pakistan has "started manufacturing more nuclear weapons. [...] However, this is a top secret."¹¹⁰
- On December 3, Pakistani Prime Minister Nawaz Sharif stated in a press conference that Pakistan "will not sign the CTBT under an atmosphere of coercion and pressure. Sanctions must be removed. The issue of Kashmir must be meaningfully addressed. And all the embargoes on Pakistan must be lifted."¹¹¹
- On December 4, following a meeting between Prime Minister Sharif and President Clinton, a reporter asked a senior US official if the United States had received

"any new assurances ... on the production of fissile nuclear materials or on export controls," and the answer was "no."¹¹²

- On December 28, Pakistan's foreign minister, Sartaj Aziz, reportedly notified his parliament that "Pakistan could not agree to any demand for a moratorium on the production of fissile material before the conclusion of the Fissile Material Cut-Off Treaty."¹¹³

A similar state of affairs appears to exist with respect to India's bomb program. On December 16, the Indian government released a statement by Prime Minister Vajpayee reviewing the status of ongoing nuclear talks with the United States.¹¹⁴ Here are some highlights:

- With respect to a moratorium on producing fissile materials, he said that "it is not possible to take such steps at this stage."
- With respect to India's "voluntary moratorium" on nuclear testing, he said that it "does not constrain us from continuing with our R&D programmes...."
- With respect to non-deployment, he noted that India's "minimum nuclear deterrent ... implies deployment of assets in a manner that ensures survivability and capacity of an adequate response."
- With respect to restraint in missile deployments, he recalled that India has "under development" a version of its intermediate-range missile, the Agni, "with an extended range."
- On December 17, the Associated Press cited the claims of certain officials that the United States had already started to provide some assistance to help India to manage its nuclear arsenal.¹¹⁵

As recently as January 6, 1999,

officials of the Indian government reportedly were even rejecting a US request for India to clarify what it meant by a "minimum nuclear deterrent"—according to a spokesman of the Indian External Affairs Ministry, "In a fluctuating environment, how can you have a fixity?"¹¹⁶

IMPROVING THE EFFECTIVENESS OF SANCTIONS AND ENGAGEMENT

Less than one year has passed since the last nuclear tests in South Asia. This is an exceedingly short time for any assessment of the efficacy of either sanctions or engagement as tools of nonproliferation policy, in this region or anywhere else. Regardless of the choice of tools, achievements are quite difficult to attribute directly to specific means, impacts may not be observable for many years, and disagreements will typically persist over which yardsticks are most suitable for measuring progress.

Both types of nonproliferation diplomacy—engagement and sanctions—are best pursued within a framework of well-defined objectives. The better the definition of the goals, the better will be the odds for holding relevant officials accountable for their activities in pursuit of such goals, for measuring progress in achieving international results, and for reaching prompt decisions to try alternative approaches. If new policies and practices can demonstrably achieve such objectives more efficiently or effectively, then by all means the United States should pursue such avenues. Yet if generous supplies of carrots continue to flow to countries that flout global norms and add to prolifera-

tion threats, the result will be a pernicious arrangement that actually rewards or reinforces behavior that society has condemned.

The relationship between sanctions and engagement as approaches to nonproliferation should be complementary, not antagonistic—their dedicated practitioners often embrace the same goals. On June 26, 1998, Senator Glenn introduced a bill (S. 2258) that outlined one possible synthesis of these approaches.¹¹⁷ The bill would grant the president three options when sanctions are required under existing laws. First, the president could simply enforce the sanction as enacted. Second, the president could delay the sanction for up to 45 days, and then implement it as enacted. And third, the president could choose not to apply the sanction. To ensure accountability and a broad base of public support, however, the third option would have to be approved by Congress. The bill also contained requirements requiring the president to assess the effectiveness of the sanction and to report specific findings to the Congress.

This proposal had several advantages over other sanctions reforms proposals that the Senate has deliberated in recent years, including ill-advised proposals to force the termination of sanctions after two years in force,¹¹⁸ to grant the president a *carte blanche* national interest waiver authority,¹¹⁹ or simply to make key nonproliferation sanctions discretionary.¹²⁰ To the extent that past US sanctions have suffered from problems of credibility, none of the latter proposals offer anything that would substantially increase the deterrent effect of a sanction. If any-

thing, they would do quite the opposite.

The Glenn proposal—if reintroduced in a future Congress—could be strengthened in two respects: first, the bill did not identify any criteria for the president to meet in proposing an alternative to sanctions (for example, a requirement that the alternative must be equally or more effective in achieving the aim of the existing sanctions law); and second, the bill did not require the same detailed assessments and reporting standards for the sanctions alternative as would be required for sanctions themselves.

Ultimately, the primary goal of nonproliferation will not be achieved by sanctions alone and surely not by the sanctions reform proposals of individual nation-states. The task that remains ahead is to encourage greater multilateral support for collective action against violators of the nonproliferation norm. As Senator Glenn has stated, “Sanctions become really effective only if they have multilateral support, whether through our allies or through the United Nations.”¹²¹ The initiative for building that support, however, has to come from somewhere, and national legislation is as serious a commitment as a country can make.

CONCLUSIONS

Though this article has focused on the evolution of a particular law, the issues raised in this discussion clearly go beyond the fate of a specific law. This historical review has shown how a major global norm can become internalized into domestic law, as well as the reciprocal process by which the domestic legislative process can complement or strengthen a global norm.

Moreover, this was clearly part of the legislative intent. As noted above, the NPPA passed the Senate by unanimous voice votes on four occasions. From the date the law was introduced in 1991 through the repeal of its sunset clause five years later, there was no significant substantive opposition voiced by anybody in Congress to this legislation, which also enjoyed the support of the Executive. The NPPA thus reflected a longstanding consensus for a stronger nonproliferation policy, including tough sanctions.

Nor were these steps without precedent. The United States has acted unilaterally in the past to create and strengthen global norms. This is illustrated by the “globalization” of the 1978 NNPA’s requirement for full-scope IAEA safeguards as a condition for civil nuclear cooperation, and the agreement of the multilateral Nuclear Suppliers Group to require controls over specific dual-use nuclear goods. US legislation in the field of nonproliferation has never been narrowed in focus to the exclusive role of ratifying the most rudimentary customary practices of other nation-states—the focus has more consistently emphasized the potential for shaping the evolution of those practices through national leadership. The legislative process has, in this respect, been truly a two-way street: integrating global norms into domestic law, and strengthening those norms in the process.

The history of the NPPA is the story of how one country—to a large extent, a team led by one senator—sought to interpret and to incorporate a global norm into its domestic legislation, and in so doing, to strengthen that norm. Thus with respect to future US legislation trans-

lating global nonproliferation norms into domestic law, the outcomes will be determined by which Congress, or faction thereof, prevails—

- the Congress that responds with alacrity to heavy lobbying by special interest groups (e.g., farmers and exporters) seeking “relief” from sanctions imposed to defend a global norm;¹²² or
- the Congress that passes a resolution condemning the Indian and Pakistani nuclear tests and urging both countries “to take immediate, binding, and verifiable steps to roll back their nuclear programs and come into compliance with internationally accepted norms regarding the proliferation of weapons of mass destruction”?¹²³

If past is prologue, the single most important factor in determining “which Congress” will prevail will likely be whether some member (or group of members) arises in the Senate or the House to take the place of Senator Glenn as the new champion of giving global nonproliferation norms some national teeth.

This article has shown how the nation-state—and individual leaders within such states—still play important roles in developing and enforcing global norms, even in the current age of interdependence. The NPPA’s basic premise—that the costs should exceed the benefits of proliferation—is perhaps the oldest basic principle in the entire history of global nuclear nonproliferation efforts. It is a principle based as much on interest as on ideals.

The NPPA and other nonproliferation laws, however, will not alone suffice to solve the long-term glo-

bal proliferation threat. The NPPA’s greatest contribution may well be in buying some time for the achievement of another global norm, comprehensive nuclear disarmament. Preserving that norm may well be the greatest international security challenge of the coming millennium. And given the potential threats from even a small amount of nuclear material, it will be a challenge that will surely persist even beyond the achievement of disarmament itself.

¹ Nuclear Proliferation Prevention Act (NPPA), section 826(a), which placed such sanctions into section 102(b)(2) of the Arms Export Control Act.

² *Ibid.*, section 826(a), which expanded the scope of section 102(b)(1) of the Arms Export Control Act.

³ *Ibid.*, section 821(a).

⁴ *Ibid.*, section 825.

⁵ *Ibid.*, section 823(a).

⁶ *Ibid.*, section 822(a)(1), amending section 3 of the Arms Export Control Act.

⁷ *Ibid.*, section 822(a)(2), amending section 40 of the Arms Export Control Act.

⁸ *Ibid.*, section 822(b).

⁹ *Ibid.*, section 830(4).

¹⁰ *Ibid.*, Part C, sections 841 and 842.

¹¹ Section 1703 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510, enacted on November 5, 1990).

¹² On October 26, 1990, Congress passed H.R. 4653, the Omnibus Export Amendments Act of 1990, Title IV of which contained similar authority with respect to chemical and biological weapons. President George Bush, however, pocket vetoed this bill on November 17, 1990. Section 505(b) of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (Title V of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993, Public Law 102-138, enacted on October 28, 1991) provided such authority.

¹³ For a detailed history of the progress that Pakistan made toward acquiring the bomb while US sanctions laws were not being applied due to presidential waivers, see statements by Senator John Glenn, “Pakistan’s Dispossessed Bomb,” *Congressional Record*, November 16, 1989, p. S-15880-15890 and “Nuclear Arms Race in South

Asia,” *Congressional Record*, November 17, 1989, pp. S-16103-16109. Between February 10, 1982, and September 30, 1993, Congress authorized eight waivers of US nonproliferation laws just on Pakistan’s behalf, five of which were exercised by the President.

¹⁴ United States Senate, Committee on Governmental Affairs, “Proliferation Watch on Iraq,” *Proliferation Watch* 1 (October 1990), p. 12. On October 9, 1990, former Admiral Elmo R. Zumwalt Jr. testified before the Committee that “The greed of our Western allies and indeed of our own corporations has been a key factor in the free world contribution to proliferation” (*Proliferation Watch* 1 [November-December 1990], p. 20). The same issue also noted evidence that the US government had itself actively been promoting significant technology transfers to Iraq. The committee had obtained a US Department of Commerce brochure that contained a “Personal Message” from then-Ambassador April Glaspie to visitors to the USA pavilion at Baghdad’s International Fair, November 1-15, 1989, saying the following: “This is the fifth year the United States has had an official pavilion at the fair, and we are pleased to announce that a record number of companies are participating, representing a wide range of America’s most advanced technologies and demonstrating American confidence in Iraq’s bright future” (p. 20).

¹⁵ Senator John Glenn, “China Syndrome,” *Proliferation Watch* 2 (March-April 1991), p. 1.

¹⁶ Letter from Senator John Glenn to Senator Claiborne Pell, June 14, 1991. In a letter to Senator Glenn dated June 21, 1991, Senator Pell asked to be included as a cosponsor of S. 1128.

¹⁷ Statement by Senator John Glenn, *Congressional Record*, May 22, 1991, pp. S-6369-6373.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ S. 1128, section 2(e).

²¹ *Ibid.*, section 2(d). The conditions were that the president must certify that “reliable information indicates that” the person “has ceased to aid or abet” proliferation and that the president “has reason to believe” that the person “will not, in the future, aid or abet” any individual, group, or foreign government to acquire unsafeguarded special nuclear material or any nuclear explosive device.

²² *Ibid.*, section 2(c)(3).

²³ *Ibid.*, section 2(b).

²⁴ *Ibid.*, section 6(b).

²⁵ Section 6(b) amended section 670(b)(1) of the Foreign Assistance Act of 1961.

²⁶ It is noteworthy that Secretary of State Madeleine Albright repeated a similar sentiment in her public reactions to the nuclear tests by India and Pakistan in 1998. An AFX wire report quoted her on June 5, 1998, as saying that “[the] worst thing would be to reward these two countries for having broken the nuclear non-proliferation regime [...] they do not deserve to be rewarded in any shape or form.” Similarly, the *Washington Post* on June 5, 1998, quoted her as saying that “The reason we’re not big into inducements here is that we don’t want other coun-

tries to feel that there is any benefit to having a nuclear weapons capability.”

²⁷ Leslie H. Gelb, “Pakistan Tie Imperils US-China Nuclear Pact,” *Washington Post*, June 22, 1984, p. A3.

²⁸ UPI, December 12, 1982.

²⁹ See “Pakistan’s Dispossessed Bomb,” statement by Senator John Glenn, *Congressional Record*, November 16, 1989, pp. S-15880-15890. The Pressler Amendment is found in section 620E(e) of the Foreign Assistance Act of 1961.

³⁰ In 1987, the Office of the Legal Adviser of the Department of State issued an official legal interpretation of the term “possession” that in essence adopted the position that possession of a bomb in parts constitutes possession of a bomb. With a curious tangle of double negatives, the statement read in part, “The fact that a state does not have an assembled device would not ... necessarily mean that it does not possess a device under the statutory standard.” See United States Senate, Committee on Governmental Affairs, *Nuclear Proliferation Factbook*, 103rd Congress, 2nd Session, S. Prt. 103-111, December 1994, p. 144.

³¹ United States Senate, Committee on Foreign Relations, hearing on “Nuclear Proliferation: Learning from the Iraq Experience,” 102nd Congress, 1st Session, S. Hrg. 102-422, October 17 and 23, 1991, hereinafter cited as “SFRC hearing.”

³² Bill Ashworth, Dave Hafemeister, and Dave Sullivan, Memorandum to Members, Committee on Foreign Relations, on “Hearing on S. 1128, the Omnibus Nuclear Proliferation Control Act of 1991 and Briefing on The Discovery of Iraq’s Weapons of Mass Destruction and Possible Initiatives for the Future,” United States Senate, Committee on Foreign Relations, October 15, 1991, p. 1. The full text of this memorandum is available at the National Archives in Washington, DC.

³³ SFRC hearing, p. 3.

³⁴ *Ibid.*, p. 7.

³⁵ *Ibid.*, p. 8.

³⁶ *Ibid.*

³⁷ *Ibid.*, p. 12.

³⁸ *Ibid.*

³⁹ Bill Ashworth, Dave Hafemeister, and Bill Triplett, Memorandum to PRMs on “Mark-up of S. 1128, the ‘Omnibus Nuclear Proliferation Control Act of 1991,’ at 10:00 a.m. on Friday, November 22, in SD-419,” November 21, 1991. This memorandum is available at the National Archives in Washington, DC.

⁴⁰ United States Senate, Committee on Foreign Relations, Stenographic Transcript of Business Meeting, November 22, 1991. This transcript is available at the National Archives in Washington, DC.

⁴¹ “Banking System Aided Pakistani Nuclear Plan,” *Washington Post*, August 11, 1991, p. A25.

⁴² “International Banks Said to Be Financial Supporters of Iraqi Nuclear Program,” *Washington Post*, October 18, 1981, p. A3.

⁴³ United States Senate, Committee on Governmental Affairs, Hearing on “Proliferation Threats

of the 1990’s,” 103rd Congress, 1st Session, S. Hrg. 103-208, February 24, 1993.

⁴⁴ Debate on the “Omnibus Nuclear Proliferation Control Act of 1992,” *Congressional Record*, April 9, 1992, p. S-5352 ff.

⁴⁵ *Ibid.*, p. S-5354.

⁴⁶ *Ibid.*, p. S-5356. The BCCI hearings investigated the foreign-owned Bank of Credit and Commerce International, which was charged with fraud, laundering of drug money, and supporting terrorists. BCCI pleaded guilty in January 1992 to federal racketeering charges and agreed to forfeit \$550 million in US assets.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*, pp. S-5357 and S-5353.

⁴⁹ *Ibid.*

⁵⁰ Senator John Glenn, “Senate Passes Major Nuclear Non-Proliferation Bill,” Press Release, Office of Senator John Glenn, April 9, 1992.

⁵¹ Office of Management and Budget, “Statement of Administration Policy: S. 1128—Omnibus Nuclear Proliferation Control Act of 1991,” March 20, 1992.

⁵² Department of State, “Administration Views on Glenn Bill (S. 1128),” communication faxed from the House Committee on Foreign Affairs to the Senate Committee on Governmental Affairs on July 27, 1992 (the original fax from the State Department was dated June 2, 1992).

⁵³ Raymond J. Celada, American Law Division, Congressional Research Service, memorandum to Randy Rydell, Senate Committee on Governmental Affairs, on S. 1128, “Omnibus Nuclear Proliferation Control Act of 1991,” January 29, 1992.

⁵⁴ United States Congress, House of Representatives, “Omnibus Export Amendments Act of 1992 (H.R. 3489),” Conference Report 102-1025, 102nd Congress, 2nd Session, October 5, 1992, p. 33-49.

⁵⁵ *Congressional Record*, May 27, 1993, p. S-6772 ff.

⁵⁶ *Ibid.*, p. S-6773.

⁵⁷ Senator John Glenn, “Dear Colleague” letter, May 28, 1993.

⁵⁸ Letter from Assistant Secretary of State Wendy R. Sherman to Senator John Glenn, July 20, 1993.

⁵⁹ Letter from Assistant Secretary of State Wendy R. Sherman to Senator Claiborne Pell, July 20, 1993.

⁶⁰ *Congressional Record*, January 31, 1994, p. S-411 ff.

⁶¹ *Ibid.*, p. S-412.

⁶² United States House of Representatives, “Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 [H.R. 2333],” 103rd Congress, 2nd Session, Report 103-482, April 25, 1994; the NPPA appears following page 131, the sunset clause appears on page 150, and the report language describing the sanctions provisions starts on page 261.

⁶³ “Control of Dual-Use Exports Splits 2 House Committees,” *Defense News*, June 20-26, 1994, p. 10.

⁶⁴ The views of the Armed Services Committee on H.R. 3937 are located in United States House of Representatives, Report on the “Omnibus Ex-

port Amendments Act of 1994,” 103rd Congress, 2nd Session, Rept. 103-531, Part 4.

⁶⁵ United States Congress, Conference Report on the “Foreign Relations Authorization Act for Fiscal Years 1996 and 1997 [the new name of H.R. 1561],” 104th Congress, 2nd Session, H. Rpt. 104-478, March 8, 1996.

⁶⁶ The *Congressional Record* is replete with such *ipse dixit*s. For example: Senator Pat Roberts, “Unfortunately, with few exceptions, sanctions very rarely work,” July 15, 1998, p. S-8193; Senator Rod Grams, “It is my opinion that unilateral sanctions do not work. They do not force countries to adopt our policies, or our standards,” July 15, 1998, p. S-8198; Representative Jim Kolbe, “We enacted a sanctions law with noble purposes—among them stopping the spread of nuclear weapons. Unfortunately, this law, like most laws imposing unilateral sanctions, didn’t work. It didn’t stop India and Pakistan from nuclear testing,” July 14, 1998, p. H-5451; and Representative Lee Hamilton recently commended and placed into the *Congressional Record* an Op-Ed by Richard Haass entitled, “Sanctions Almost Never Work,” July 14, 1998, p. E-1291. Senator Richard Lugar also recently wrote that “The threat of US sanctions did not deter India or Pakistan from testing their nuclear devices, nor have they been helpful in alleviating tensions between the two countries or in promoting worldwide non-proliferation goals,” letter to Senate colleagues, June 4, 1998.

⁶⁷ Senator John Glenn, “Nuclear Weapons and Sanctions,” *Congressional Record*, July 6, 1998, p. S-7350. He then, however, proceeded to characterize the tests as “a setback, not the end of our efforts” and described several historical instances when “unilateral sanctions worked, and they worked well.” He also said that the sanctions “worked” in “holding back some of Pakistan’s advance in their nuclear weapons program.”

⁶⁸ Under Secretary of State Thomas R. Pickering, quoted in “Albright Loses Luster,” *Washington Post*, August 30, 1998, p. A1.

⁶⁹ Secretary of State Madeleine Albright, speech at the Henry L. Stimson Center, Washington, DC, June 18, 1998.

⁷⁰ “India Planned Nuclear Tests 15 Years Ago: Former President,” Agence France Presse, May 26, 1998.

⁷¹ Manoj Joshi and Shefali Rekhi (with Stephen David, K.M. Thomas, and Tania Anand), “US Sanctions: Target India,” *India Today*, November 30, 1998, p. 56 ff.

⁷² “Enhancement of Trade, Security, and Human Rights through Sanctions Reform Act (S. 1413),” 105th Congress, 1st Session.

⁷³ *Ibid.*, section 6(c)(1)(B)(vii).

⁷⁴ Secretary of State Madeleine Albright, Press Remarks on India and Pakistan, Department of State, June 3, 1998.

⁷⁵ Secretary of State Madeleine Albright, interview on “Late Edition,” Cable News Network, June 14, 1998.

⁷⁶ Section 670 of the Foreign Assistance Act of 1961.

⁷⁷ Senator John Glenn, “International Security and

Development Act of 1981," *Congressional Record*, October 21, 1981, p. 24629 ff.

⁷⁸ *Ibid.*, p. 24631.

⁷⁹ *Ibid.*, p. 24633. Senator Glenn elaborated as follows: "... we are talking about nuclear explosions.... We are talking about whether the United States is prepared to give the impression that we would still provide economic and military assistance to non-nuclear weapon states that mount nuclear explosions.... Are we going to say to those 112 nations [then parties to the NPT] that the United States of America can contemplate the possibility of sending economic and military assistance to Pakistan and India after they have actually exploded a nuclear device, while we will ask these 112 nations to hold off now and forswear nuclear arms? How can we urge this and at the same time we give the ultimate in cooperation to those who violate the spirit and intent of our nonproliferation legislation? If we can contemplate that, Mr. President, then we might just as well put our nuclear bombs up for sale and say we are going to be the reliable supplier of nuclear weapons...."

⁸⁰ *Ibid.*

⁸¹ *Ibid.*, pp. 24640-24644.

⁸² Senator John Glenn, interview on "Late Edition," Cable News Network, June 14, 1998.

⁸³ Senator John Glenn, "Nuclear Weapons and Sanctions," *Congressional Record*, July 6, 1998, p. S-7349.

⁸⁴ *The Random House College Dictionary*, Revised Edition (New York: Random House, 1984), p. 683.

⁸⁵ *Ibid.*, p. 504.

⁸⁶ Louis Henkin, *How Nations Behave: Law and Foreign Policy* (London, UK: Pall Mall Press, 1968), p. 258.

⁸⁷ A recent report released by the Council on Foreign Relations and the Brookings Institution has nevertheless recommended new arms transfers to India and Pakistan as well as a relaxation of controls over dual-use exports. The primary author, Richard Haass, has voiced support for a US/Indian "strategic partnership" and criticized the notion of a "one-size-fits-all" nuclear regime as "theology, not policy." See Barbara Opall-Rome, "Panel Proposes US Weapons Sales to India, Pakistan," *Defense News*, October 18, 1998, p. 38.

⁸⁸ For a list of twenty official policy statements claiming that US assistance would induce Pakistan to restrain its nuclear ambitions, see Senator John Glenn, "US Aid Policies and Pakistan's Bomb: What Were We Trying to Accomplish?," Exhibit 1, *Congressional Record*, September 20, 1995, p. S-13962.

⁸⁹ Gerard C. Smith and Helena Cobban, "A Blind Eye to Proliferation," *Foreign Affairs* 68 (Summer 1989), p. 53.

⁹⁰ "Pakistan Pledges A-Bomb Test Ban if Sanctions End," *New York Times*, September 24, 1998; "India Ready to Sign Nuclear Treaty Ban," *Washington Post*, September 25, 1998.

⁹¹ "Two for the Test Ban Treaty," *Washington Post*, September 27, 1998.

⁹² "Nuclear Gain in South Asia," *New York Times*, September 26, 1998.

⁹³ Arms Export Control Act, section 102(b)(4).

⁹⁴ Arms Export Control Act, sections 102(b)(2)(D)(ii) and 102(b)(2)(A).

⁹⁵ "US Allows An Exception In Supporting Loan for India," *New York Times*, June 26, 1998, p. A6.

⁹⁶ Arms Export Control Act, sections 102(b)(2)(D)(i) and 102(b)(2)(G).

⁹⁷ Arms Export Control Act, sections 102(b)(2)(A), 102(b)(2)(F), and 102(b)(2)(G).

⁹⁸ Public Law 105-277, enacted on October 21, 1998.

⁹⁹ United States Department of Commerce, Bureau of Export Administration, "US Sanctions on the Export of Dual-Use Goods to India and Pakistan," June 22, 1998.

¹⁰⁰ United States Department of Commerce, Bureau of Export Administration, "India and Pakistan Sanctions and Other Measures," *Federal Register*, Vol. 63, No. 223, November 19, 1998, p. 64322 ff.

¹⁰¹ Deputy Secretary of State Strobe Talbott, Address at the Brookings Institution, November 12, 1998 (text available at <http://www.state.gov>).

¹⁰² It is not at all clear if the Clinton administration regards these five steps as also a "crucial and immutable guideline of our policy," a term Mr. Talbott appeared to limit to the NPT. This uncertainty is especially evident with respect to the US call for a halt to the production of additional fissile nuclear material and the deployment of ballistic missiles in South Asia. On January 12, 1999, Samuel R. Berger, the Assistant to the President for National Security Affairs, stated in a speech that US nuclear goals in the region included "restraint on" undertaking such activities. (Remarks at Carnegie Endowment for International Peace, Washington, DC).

¹⁰³ White House Spokesman Joe Lockhart has characterized the US fissile material goal as a "moratorium" on production pending the negotiation of the fissile material treaty. He also added the goal of "a restraint regime covering nuclear weapons." See White House Regular Briefing, November 24, 1998, Federal News Service.

¹⁰⁴ Strobe Talbott, speech on November 12, 1998. Ambassador Thomas Graham, Jr., a senior member of the US delegation that worked to achieve an indefinite extension of the NPT in 1995, has identified three reasons why sanctions "must remain in force" until both countries agree not to weaponize or deploy weapons: (1) to show resolve; (2) to devalue the prestige of acquisition; and (3) to show other states the costs of following the South Asia example. Ambassador Thomas Graham, Jr., "South Asia and the Future of Nuclear Non-Proliferation," *Arms Control Today* 28 (May 1998), p. 5.

¹⁰⁵ United Nations Security Council, S/RES/1172 (1998), June 6, 1998. It also urged both countries to participate in negotiations to conclude a treaty banning the production of fissile material for nuclear weapons and to become parties to both the Comprehensive Test Ban Treaty and—presumably a longer-term objective—the NPT. With respect to export controls, the resolution encouraged all countries "to prevent the export of equip-

ment, materials, or technology that could in any way assist" bomb programs in India or Pakistan; it also called upon both countries "not to export" items that "could contribute" to any weapons of mass destruction or missile programs in other countries.

¹⁰⁶ Statement by the White House Press Secretary, November 9, 1998. In October, Congress placed this one-year waiver authority into the "India-Pakistan Relief Act" (Title IX of Public Law 105-277), commonly known as the "Brownback amendment" after its primary author, Senator Sam Brownback (R-KA). President Clinton officially exercised this authority on December 1, 1998 in Presidential Determination 99-7.

¹⁰⁷ Statement by the Press Secretary, The White House, Washington, DC, December 21, 1998.

¹⁰⁸ Agence France Presse, "Pakistan Wins Reprieve in a 5.5-Bln-Dir IMF Deal, Averts Debt," November 26, 1998.

¹⁰⁹ "Pakistan Starts Producing Plutonium," *The Nation* (Lahore), November 17, 1998.

¹¹⁰ "Pakistan Begins Production of Nuclear Weapons," *Jang* (Rawalpindi), December 19, 1998.

¹¹¹ Prime Minister Nawaz Sharif, press conference at National Press Club, Washington, DC, December 3, 1998.

¹¹² Bruce Reidel (NSC Senior Director for Near Eastern and South Asian Affairs), White House Press Briefing, December 4, 1998.

¹¹³ Foreign Minister Sartaj Aziz, written reply to a parliamentary question, reported by *The Nation* (Islamabad), December 28, 1998.

¹¹⁴ Prime Minister Atal Behari Vajpayee, parliamentary statement, as reported by Government of India Press Information Bureau, 17 December 1998. See also, "India Indicates It Will Develop Missiles and Atomic Weapons," *New York Times*, December 16, 1998, p. 11.

¹¹⁵ Associated Press, "US Helps India Manage Nukes," December 17, 1998.

¹¹⁶ "India Rejects US Demand to Specify its Nuclear Needs," Deutsche Presse-Agentur wire report, January 6, 1999.

¹¹⁷ "Sanctions Implementation Procedures Act of 1998," S. 2258, introduced by Senator John Glenn, *Congressional Record*, June 26, 1998, p. S-7256. For further details, see Senator John Glenn, "Nuclear Weapons and Sanctions," *Congressional Record*, July 6, 1998, p. S-7350.

¹¹⁸ S. 1418, introduced by Senator Richard Lugar on November 7, 1997.

¹¹⁹ S. 2224, introduced by Senator Christopher Dodd on June 25, 1998.

¹²⁰ S. 2194, introduced by Senator Pat Roberts on June 19, 1998.

¹²¹ Senator John Glenn, *Congressional Record*, July 6, 1998, p. S-7350.

¹²² On the efforts of the farm lobby against the nuclear sanctions, see "Visit to US Fails to Ease India, Pakistan Tensions," *Journal of Commerce*, December 4, 1998, p. 1A.

¹²³ Section 1532 of the "Strom Thurmond National Defense Authorization Act for Fiscal Year 1999," Public Law 105-261, enacted on October 17, 1998.