

# The 1989 China Arms Ban: Putting Europe's Position to Congress

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## Executive Summary

The European Union (EU) agreed in December 2004 to lift the only one of its arms control regimes that is targeted exclusively at China. The move has emerged as a powerful test of Europe's new security policy, and of its ability to communicate decisions like this to key allies and stakeholders. The decision taken in December was sound. Though not implemented immediately pending some strengthening of a Code of Conduct on arms exports and consultation with allies, the move has provoked strong opposition from certain quarters in the USA, especially Congress, from other governments, especially Japan, and from some parliaments in Europe, especially the European Parliament and the German parliament.

The arms ban in question was imposed on China by the European Council in 1989 as part of a package of political and economic sanctions in reaction to the violent suppression of the Tiananmen democracy movement. All other Tiananmen sanctions imposed by the Council, except this one, have been lifted. Of some particular note, the ban on military to military contacts has been lifted for some time.

For the foreseeable future, even if this China-specific ban linked to the 1989 events is lifted, the European Union (EU) and its member states will limit the flow of their weapons and military-related technology to China under a number of control regimes that do not so specifically target China.

The EU will continue to restrict the flow of its military-related high technology and weapons systems because of standing concerns about human rights in China and about peace in the Taiwan Strait. This is a good policy, and there is an excellent framework for it. This framework is based in part on the EU Code of Conduct on arms exports agreed in 1998, an evolution of the Common Criteria for arms exports adopted in 1991 and 1992. The EU reviews the performance of its Member States against the Code's criteria on an annual basis, and publishes quite comprehensive, public data on the flow of weapons to all recipients. The Code will be strengthened in some ways when the ban imposed on China in 1989 is lifted.

If the value of sales of military related technologies or weapons systems from Europe to China were to double or treble within the next five years, this would contribute to an improvement in China's military capabilities. But the contribution would be miniscule and would likely take ten to twenty years to have any effect at all on the capacities of the Chinese armed forces for large scale combat operations. There is no way that sales on the scale likely to occur would significantly alter China's calculus of risk for using force against Taiwan. This is even the assessment of the US Department of Defense, an organisation which until recently has had a reputation for being 'hawkish' on China.

It is this author's assessment that China's recently adopted anti-secession law represents no change in policy toward a more aggressive stance, though it is a response to some increased pressure inside China for firmer action against Taiwan. Of some note, the law mandates the exhaustion of all possible means for peaceful resolution of the dispute before resort to military means. Another important innovation in the law also empowers the State Council, and not just the more hawkish Central Military Commission, to decide on the use of force.

In the area of human rights, the arms ban was imposed mainly to register European opposition to use of lethal force by the armed forces on a large scale against unarmed protesters to end peaceful demonstrations. Once all other sanctions imposed in 1989 were lifted, the symbolic effect of this last remaining sanction on the attitudes of Chinese leaders to domestic political order has been zero. Possible future sales, like the current restrictions, would simply have no impact on the setting of domestic human rights policies in China.

Critics of lifting the China specific ban of 1989 have not made a credible and coherent case that takes due account of the relatively minor place such a ban occupies in the overall policies of China, or the USA, Japan and the EU. All of these Western countries continue to promote large scale financial flows to China and large scale trade and investment relations with it. Any reproachful signal that the arms

ban was supposed to send to China on human rights has been completely outweighed by the lifting of all other sanctions, including the ban on military to military ties, but especially also by the vigorous support by the USA, Japan and Europe for a large-scale and intensive economic relationship with China.

Moreover, for many years now, neither the USA nor the EU and its member states have regarded the so-called ban as a total prohibition on the sale of military related technologies. The USA consistently, under both President Bush senior and President Clinton, provided exemptions to the Tiananmen sanctions on sale of dual use technologies, and made sales far more strategically important to China's overall military capability than anything EU members have done or contemplated to date.

The 'strength of feeling' in the USA about the EU's planned lifting of the 1989 China-specific embargo is based largely on ignorance about the EU arms restrictions and of China's leadership decision-making processes; on lack of familiarity with the mixed record of sanctions and embargos as a tool of policy; or on deliberate misrepresentation of the facts. The 'strength of feeling' is actually built on domestic political considerations, as most embargo policies are, and not on any evaluation of the effectiveness of the embargo in changing the policy of the target state. The 'strength of feeling' comes from several quarters, each with quite distinct interests.

It is time for the EU to face down this alliance of special pleaders trying to preserve an inconsequential, largely symbolic measure that is so visibly contradicted by the massive flows of capital from Europe and the USA, and by the burgeoning relationships between their armed forces and those of China. To do this, the EU must launch an even more vigorous public diplomacy campaign to convince the US Congress that it will continue to restrict the sales of weapon systems to China, much as the USA does it itself, even if the 1989 China-specific ban is written off the books.

This public diplomacy will not be easy. It will need significant resources and substantial involvement of the most senior political figures and well-informed specialists. Leading EU member states,

such as Britain, France, Italy and Germany must act together to deliver a common message to the USA.

This strong campaign must be directed more at the Congress than at the Administration because the EU has been more successful in selling its proposed policy change to the Administration. The latter has better knowledge levels about EU policy and a generally more business-like approach, whereas the Congress is more ideological and more politically mobilised against China for several quite disparate reasons (human rights, Taiwan policy and the trade deficit). The Administration has not been willing to use its own political capital with Congress to convince it to be more reasonable on the lifting of the 1989 arms ban.

Even when the 1989 arms ban is lifted, especially in the first one to two years, the EU will need to continue working much more vigorously than at present with Congress on these issues to dampen the inevitable tensions that will arise.

Perhaps it is time for the European Council, if it is to have an EU Foreign Minister, as provided for in the draft Constitution, to equip that post with the massive public diplomacy assets that it demands, not just for the China case, but for the other big trans-Atlantic issues as well, and the full panoply of the EU's international security interests.

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## Introduction

In 1989, the European Council imposed an arms ban on China as part of a package of political and economic sanctions in reaction to the violent suppression of the Tiananmen democracy movement. (See Appendix 1 for the text of the decision.) All other Tiananmen sanctions have been lifted except this one. Of some particular note, the ban on military to military contacts has been lifted for some time. In December 2004, after sustained lobbying by China, the Council agreed (member states voting unanimously) to lift this sixteen year old military trade ban. It is one of many EU restrictions that affect military trade with China (and which will remain in force) but is the only one that is specifically targeted at China.

The decision taken in December was sound, and it remains to be executed pending agreement by EU member states on new arrangements to strengthen other existing restrictions so that concerns about China's current military policies can be addressed. This executive or implementing decision has been foreshadowed for May 2005.

The decision by the Council to lift the one remaining sanction imposed by it on China in 1989 has provoked strong opposition from certain quarters in the USA and Japan, and from some parliaments in Europe, especially the European Parliament and the German parliament. More than 500 Chinese human rights activists have sent an open letter to the European Union urging it not to lift its arms embargo on China.<sup>1</sup> In late March 2005, US Secretary of State, Condoleezza Rice urged the European Union (EU) not to lift its current ban on arms sales to China. She argued that to do so would 'send the wrong signal' to China on its human rights practices and might alter the military balance between China and Taiwan.<sup>2</sup> Similar arguments were made in December 2004 by Amnesty International.<sup>3</sup>

<sup>1</sup> BBC, 'EU Urged to Keep China Arms Ban', <http://news.bbc.co.uk/2/hi/asia-pacific/4378017.stm>.

<sup>2</sup> US Secretary of State, Condoleezza Rice, 'Remarks to the Press in China', Beijing, 21 March 2005, <http://www.state.gov/secretary/rm/2005/43678.htm>. Dr Rice said: 'the

According to a US official cited in the *Financial Times*, the EU was underestimating the strength of feeling in Washington over arms sales to Beijing: 'A failure to understand the significance of this issue is going to result in major problems for transatlantic arms procurement', he warned.<sup>4</sup> On 14 April 2005, the European Parliament approved<sup>5</sup> a resolution that, *inter alia*, called on the European Council not to lift the arms embargo on China.

The willingness of the EU (the European Council) to follow through with its decision of December 2004 has become an important test of its new security strategy, of its capacity to stand up to unreasonable and ill-informed special pleading from allies, and of the separation of powers between existing and projected structures of the EU in the area of common foreign and security policy. Does the EU have the strength and will to face down such strong pressure from its allies to defend what is a sound policy decision?

## Military Trade Bans: Purposes, Effects and Risks

In April 2005, the US announced its decision to sell advanced fighter jets to Pakistan, a country that has repeatedly been the subject of

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lifting of an arms embargo at this time -- continuing human rights concerns but also continuing concerns about the military balance -- would not be the right signal, and perhaps more importantly it might actually serve to alter the military balance in a place where the United States, in particular, has very strong security interests because, after all, it is American forces here in the Pacific that has played the role of security guarantor.'

<sup>3</sup> Amnesty International evidence to Select Committee on Defence 15 December 2004, <http://www.parliament.the-stationery-office.co.uk/pa/cm200405/cmselect/cmdfence/145/4121502.htm>, Robert Parker, the military, security and police co-ordinator for Amnesty International. Mr Parker said: 'What signal does this send to human rights defenders who are imprisoned for their activities in China? What leverage does the EU then maintain, if any, over China if it gives up the arms embargo in terms of human rights? ... We could also then look at the role of China as a proliferator and the role of regional stability...'

<sup>4</sup> Stephen Fidler and Daniel Dombey, 'US rejects Straw's attempt to ease tension over China arms embargo', *Financial Times*, 20 January 2005.

<sup>5</sup> By 431 votes in favour to 85 votes against with 31 abstentions.

military trade bans imposed by the US in retaliation for human rights abuses (especially the imposition of military rule) or for concerns over nuclear or missile proliferation. According to a senior Pakistani diplomat, his country no longer takes US sanctions of this kind seriously because long experience beginning in the late 1970s shows that within one or two years of being imposed, the sanctions were either weakened or lifted when US strategic objectives dictated closer relations with Pakistan, as they were after the Soviet invasion of Afghanistan.<sup>6</sup>

This evidence is just one piece of an overwhelming body of evidence that arms embargos have rarely been successful in limiting the flow of weapons to targeted countries for all but a short period of time.<sup>7</sup> The main weakness has been the availability of alternate suppliers or the unwillingness of states declaring the sanctions to observe them rigorously. This was the case with the arms embargos applied both against South Africa for its apartheid policies for three decades from 1963 and against the former Yugoslavia after 1992.

Apart from stopping the flow of weapons, the only other purpose for applying an arms embargo is to impress upon the target state the seriousness with which the enforcing state or states view the actions that provoked the embargo. This aim involves the vilification of the target state in the eyes of the international community and is meant to be both punitive and deterrent in effect.

States most often reach for this instrument when they would like to reverse the actions of the target state but feel constrained from using military force to do so. Thus, while an arms embargo is of important symbolic value, it is often imposed because of the weakness of the imposing state to really affect the change it wants. An arms embargo is often imposed as a response to domestic pressure on

<sup>6</sup> Interview with the author, June 2003.

<sup>7</sup> See for example, David Cortright, George A. Lopez with Linda Gerber. 'Sanctions Sans Commitment: An Assessment of UN Arms Embargoes', A Project Ploughshares Working Paper, February, 2002; Loretta Bondi, 'Arms Embargoes', Bonn International Center for Conversion First Expert Seminar: Smart Sanctions, The Next Step: Arms Embargoes and Travel Sanctions. Bonn: November 1999. Human Rights Watch Final Draft January 2000.

the government of the imposing to state when that government would prefer not to.

Thus, for most circumstances, there are myriad difficulties in applying an arms embargo as sensible policy for extended periods of time. If an arms embargo is to be effective, the most important element of it should be clarity on the link between the embargo and a desired outcome within an identified period of time.

An indefinite arms embargo that is not accompanied by other coercive measures, that produces no change in behavior of the target state, and that does not limit the availability of weapons imports by the target state is *prima facie* a pointless policy (except that it might make the imposing state 'feel good' or it might appease domestic opinion). The error is compounded when the imposing states are actively pursuing close economic and political relations with the target state on a scale and intensity that overshadow the scope of the arms ban. The error is further compounded when the imposing states actively support the transfer of billions of dollars in development assistance from major lending institutions or aid agencies. This transfer of economic resources to the target state would actually release domestic investment funds of the government for development of its military industry. Even the export of commodities, especially metals but even wool and food, is regularly turned to military advantage by states that are otherwise the subject of an arms embargo.

## EU Military Trade Bans and Restrictions

The EU 'doctrine' on arms embargos is laid out as follows:

Arms embargoes are applied to stop the flow of arms and military equipment to conflict areas or to authoritarian regimes that are likely to use them for internal repression or aggression against a foreign country. In this perspective, CFSP legal instruments imposing an arms embargo generally comprise:

- a prohibition to sell, supply, transfer or export arms and related materiel of all types, including weapons and ammunition,



military vehicles and equipment, paramilitary equipment and spare parts;

- a prohibition to provide financing and financial assistance, technical assistance, brokering services and other services related to military activities and to the provision, manufacture, maintenance and use of arms and related materiel of all types.<sup>8</sup>

The term 'arms embargo' in this case has several possible meanings: prohibitions identified in national legislation, in the EU Code of Conduct on arms exports or other EU instruments, or in the 1989 China-specific 'arms embargo'. There are numerous regimes under which the export of military related technologies from EU member states to any other state, including China, are controlled. These include: UN, OSCE and EU arms embargoes; the Nuclear Non-Proliferation Treaty, the Biological and Toxin Weapons Convention and the Chemical Weapons Convention; commitments in the frameworks of the Australia Group, the Missile Technology Control Regime, the Nuclear Suppliers Group and the Wassenaar Arrangement,<sup>9</sup> and their commitment not to export any form of anti-personnel landmine. All of these control or restrict military related exports to China in some way.

There is also the EU Code of Conduct on arms exports agreed in 1998, an evolution of the Common Criteria for arms exports adopted in 1991 and 1992. (See Appendix 2 for the text of the Code of Conduct.) It applies eight criteria against which member states must evaluate applications for export licences by would be purchasers,

<sup>8</sup> See [http://europa.eu.int/comm/external\\_relations/cfsp/sanctions/index.htm#4.1.%20Arms%20embargoes](http://europa.eu.int/comm/external_relations/cfsp/sanctions/index.htm#4.1.%20Arms%20embargoes).

<sup>9</sup> 'The Wassenaar Arrangement has been established in order to contribute to regional and international security and stability, by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilising accumulations. Participating States will seek, through their national policies, to ensure that transfers of these items do not contribute to the development or enhancement of military capabilities which undermine these goals, and are not diverted to support such capabilities'. The 34 participating states are Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Poland, Portugal, South Korea, Romania, Russia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, UK and USA. See <http://www.wassenaar.org/welcomepage.html>.

and these include respect for human rights in the applicant country and threats to peace by it:

- respect for the international commitments of EU member states, in particular the sanctions decreed by the UN Security Council and those decreed by the Community, agreements on non-proliferation and other subjects, as well as other international obligations
- respect of human rights in the country of final destination
- internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts
- preservation of regional peace, security and stability
- national security of the member states and of territories whose external relations are the responsibility of a Member State, as well as that of friendly and allied countries
- behaviour of the buyer country with regard to the international community, in particular its attitude to terrorism, the nature of its alliances and respect for international law
- existence of a risk that the equipment will be diverted within the buyer country or re-exported under undesirable conditions
- compatibility of the arms exports with the technical and economic capacity of the recipient country, taking into account the desirability that states should achieve their legitimate needs of security and defence with the least diversion for armaments of human and economic resources.

The EU reviews the performance of its Member States against the Code's criteria on an annual basis, and quite comprehensive, public reports on the granting of export licenses to any country for military related technologies are made annually both by the EU and member states.<sup>10</sup> The Code is regularly revised.

<sup>10</sup> See for example, Sixth Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports, (2004/C 316/01) 21 December 2004, Official Journal, [http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/oj/2004/c\\_316/c\\_31620041221en00010215.pdf](http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/oj/2004/c_316/c_31620041221en00010215.pdf); and France, Ministry of Defense, Rapport au Parlement sur les Exportations d'Armement de la France en 2002 et 2003, 28 January 2005, [http://www.defense.gouv.fr/portal\\_repository/817696033\\_0002/fichier/getData?\\_&ispopup=1](http://www.defense.gouv.fr/portal_repository/817696033_0002/fichier/getData?_&ispopup=1).

In June 2000, the Council adopted a Common List of military equipment covered by the code of conduct on arms exports. The Council also adopted a Common Position on the control of arms brokering in June 2003.<sup>11</sup> The Common List of military equipment does not contain dual use goods, exports of which are controlled in accordance with a different Council Regulations.<sup>12</sup> The EU takes the view that since 'dual use' items, 'by their very nature, have entirely legitimate applications', control of their export should be managed under a different regulation, to allow for the granting of export authorisation.

In connection with the lifting of the 1989 China arms embargo, the EU has been considering refinements to the Code of Conduct. According to the *Financial Times*, the revised code of conduct, which will remain non-binding, will include provisions on arms-brokering and 'intangible' transfers of technology. The newspaper also reported that the EU was also still considering a transitional regime to 'maintain controls on countries for which embargoes are lifted'.<sup>13</sup>

## The Remaining Tiananmen Sanction

In 1989, the European Council imposed a series of punitive measures on China for its violent repression of the Tiananmen democracy movement.<sup>14</sup> These measures included, *inter alia*:

<sup>11</sup> Council Common Position 2003/468/CFSP.

<sup>12</sup> The EU has several regimes for controlling dual use exports. These are: Council Regulation (EC) No 1334/2000 of 20 June 2000, setting up a Community regime for the control of exports of dual use items and technology (as last amended by Council Regulation (EC) No 1504/2004 of 19 July 2004); Joint Action 401/2000 CFSP concerning the control of technical assistance related to certain military end-uses; Peer Review of Member States' Export Control Systems for Dual Use Goods conducted in the framework of the EU Strategy against Proliferation of Weapons of Mass Destruction. See <http://ue.eu.int/showPage.asp?id=408&lang=en&mode=q> for further detail.

<sup>13</sup> James Blitz and Daniel Dombey, 'Straw admits ending EU arms embargo on China will create tension with US', *Financial Times*, 19 January 2005.

<sup>14</sup> For text, see Appendix 1.

- ❑ interruption of military cooperation and an embargo on trade in arms;
- ❑ suspension of bilateral ministerial and high-level contacts;
- ❑ postponement by Member States of new cooperation projects;
- ❑ reduction of programmes of cultural, scientific and technical cooperation to only those activities that might maintain a meaning in the present circumstances.

As of April 2005, some sixteen years after the sanctions were imposed, all of these measures have been revoked, except one: the ban on arms sales. The USA was one of the first countries to move to end most of the sanctions as early as 1989, with the visit to China of the President's National Security Adviser, Brent Scowcroft, in July of that year and exchange of high level visits in late 1990. Presidents Bush senior and Clinton quite routinely issued waivers of these sanctions for Chinese satellite projects involving US sales to China, some 13 in total.<sup>15</sup>

But clearly, not all of the sanctions were 'equal', as indicated in 1998 by Sandra Kristoff, a senior adviser to President Clinton.<sup>16</sup> She said: 'we have indicated to the Chinese that in addressing the Tiananmen sanctions, the peeling away of those sanctions has to occur in the context of an improving U.S.-China relationship, and in response to China's actions on particular issues of concern'. It has clearly been the current US position that the peeling away of the last remaining sanction from 1989 has to be accompanied by some improved Chinese performance on the protection of human rights, but just what this change demanded of China might be has not been articulated consistently by successive administrations.

<sup>15</sup> A Joint Hearing of the Committees on International Relations and National Security U.S. House of Representatives, U.S. Policy Regarding Satellite Exports to China Testimony by Shirley A. Kan, Analyst in Foreign Affairs Foreign Affairs and National Defense Division, 17 June 1998, [http://www.globalsecurity.org/space/library/congress/1998\\_h/h980617-kan.htm](http://www.globalsecurity.org/space/library/congress/1998_h/h980617-kan.htm).

<sup>16</sup> US Consulate, Hong Kong, Transcript: NSC'S Sandra Kristoff on Asia Economic Situation, <http://hongkong.usconsulate.gov/uscn/others/1998/0320b.htm>, Special Assistant to the President for the Economic Situation in Asia and Senior Director for Asian Programs, National Security Council, in 1998.

As far as the restriction of arms exports to China goes, the EU has been rigorous. In 2003, the EU Member states refused applications for 44 export licenses from China for military related equipment and granted 159. The major seller to China was France (€172 million), followed by Italy (127 million) and the Czech Republic (€4 million). The available information is not complete, but it does allow a clear view that there was no significant transfer of weapons systems from the EU to China in that year. The bulk of the sales were for military related electronic, imaging or computer related technologies and were in relatively small individual packets of €100 million and €45 million.

Critics of the lifting of the 1989 embargo have been exaggerating the significance and impact of EU sales of military related technology to China. For example, according to the *Financial Times*, the 'EU almost doubled its approvals for arms sales to China between 2002 and 2003'. The FT argued that this was evidence contradicting assertions from some EU member states that they did not intend to increase weapons sales to China once the EU rescinded the guidelines.<sup>17</sup>

When export licences sought by China are refused by a member state, there is not always an indication as to which set of restrictions the refusing state was applying: either national legislation, the EU Code of Conduct on arms exports or the 1989 'arms embargo'.

The USA has not made a credible and coherent case in public against lifting of the 1989 China-specific arms bans that takes due account either of the EU record in controlling the flow of weapons or military technologies to China or of the likely impact of lifting the

<sup>17</sup> James Blitz and Daniel Dombey, 'Straw admits ending EU arms embargo on China will create tension with US', *Financial Times*, 19 January 2005. The article reports: 'The EU's annual report on arms exports show the value of licences to sell arms to China totalled €416m (£290m) in 2003 against €210m for 2002. According to information in the EU's Official Journal last month, France granted €171m of licences for arms sales to China in 2003, Italy €127m and the UK €112m - all figures well above the previous year's tallies'.

1989 China-specific ban when the generalised guidelines will remain in place and be strengthened.

## What Europe Expects from China

The EU argues that the 1989 arms ban is out of kilter with the high levels of EU-China economic<sup>18</sup> and political cooperation already in place and quite inconsistent, even incompatible with what the EU wants from China in the future. The decision to lift the ban has not been made quickly or without due deliberation. On 21 April 2005, Javier Solana, the High Representative for Common Foreign and Security Policy observed that the EU was keen to improve its relationship with the new generation of leaders in China. He said: 'we don't want to deal with China with sanctions, we want to deal with China as a country in the international community'.<sup>19</sup>

The time line of consideration by the European Council provides a good view on how the EU has considered the matter and where its sits in the balance of EU policy.

On **13 October 2003**, the Council adopted a policy of significantly scaled up relations with China after its consideration of a paper by the Commission on China, 'A maturing partnership - shared interests and challenges in EU-China relations'.<sup>20</sup> Noting that the draft European Security Strategy of June 2003 recognised China as a major partner of the EU, the Council committed itself to 'work together [with China] to promote global stability, peace and sustainable development'. This would include, the Council said, 'support for a peaceful resolution of the territorial disputes in the

<sup>18</sup> According to the European Commission, China is now the EU's second largest non-European trading partner after the US, and the EU is China's second largest export market. In recent years, EU companies have invested considerably in China (new annual flows of utilised FDI of around USD 4.2 on average in the 5 years to 2004), bringing stocks of EU FDI to over USD 35 billion. See [http://www.europa.eu.int/comm/external\\_relations/china/intro/](http://www.europa.eu.int/comm/external_relations/china/intro/).

<sup>19</sup> Reuters, 'EU committed to lifting China arms ban—Solana', 21 Apr 2005, <http://www.alertnet.org/thenews/newsdesk/B706304.htm>.

<sup>20</sup> For a general overview and links of relevant documents, see the EU web-site at the following address: [http://www.europa.eu.int/comm/external\\_relations/china/gac.htm](http://www.europa.eu.int/comm/external_relations/china/gac.htm).

South China Sea', 'co-operation in multilateral fora, especially at the UN, on issues including peacekeeping, conflict prevention and confidence building, non-proliferation of weapons of mass destruction, arms control, disarmament and terrorism as well as discussion of global environmental issues'.

On human rights, the Council underlined that support for the 'transition to an open society based upon the rule of law and the respect for human rights is an essential element of the EU's policy towards China'. The Council noted the 'progress linked to China's remarkable economic growth in reducing poverty'. At the same time, the Council expressed its continuing concern about the 'significant gap still existing between the current human rights situation in China and internationally accepted standards, in particular with respect to civil and political rights, freedoms of speech, assembly, religion, belief and the rights of persons belonging to minorities'. The Council 'deplored the frequent and extensive application of the death penalty and the persisting practice of re-education through labour'. The Council called on China to ratify the UN Covenant on Civil and Political Rights and 'to take measures to improve the situation of human rights and rule of law on the ground'.

On Taiwan, the Council reaffirmed its continued support for a 'peaceful resolution of the Taiwan issue through constructive dialogue'.

On **12 December 2003**, the Council instructed its foreign ministers (General Affairs Council) to 're-examine the question of the embargo on the sale of arms to China'. On **26 April 2004**, the Council discussed the embargo, noting that it had been 'imposed as a response to specific events in 1989 and that a solution for the matter had to be found which was in line with the current situation in China, the increasingly close bilateral relations and the EU's intention to develop a strategic partnership with China'. The Council called for further discussion, in particular 'taking into account the human rights situation in China and questions relating to the application of the EU Code of Conduct on Arms Exports'. The matter was further referred to the Permanent Representatives Committee (Coreper) and the Political and Security Committee.

On **11 October 2004**, the ministers reviewed the state of discussions on the embargo. It also took a series of decisions on the EU-China dialogue on human rights. It noted 'China's work thus far towards the ratification of the International Covenant on Civil and Political Rights (ICCPR)'. The Council reiterated its concern about 'continuing violations of human rights, such as the freedom of expression (including press freedom and internet), freedom of religion and freedom of assembly and association'. It also concluded that there has been 'no progress in the respect for the rights of persons belonging to minorities, in particular as regards religious freedom, and a continued erosion of minority culture, in particular in Tibet and Xinjiang'. The Council's overall assessment was there was a 'mixed picture of progress in some areas and continuing concerns in others'.

Most importantly, the Council concluded that 'from a long term perspective, a positive trend can be seen, with improvements in the rule of law and respect for economic rights and decline in the influence of the state on citizens' daily life'.

On **16 November 2004**, the Commissioner for External Relations, Chris Patten, reported to parliament on the arms embargo.<sup>21</sup> He noted that in the past year, China had intensified its campaign to have the ban lifted. He said that the 'Chinese authorities consider the embargo to be evidence of discrimination against them', that it is 'obsolete', and that it 'severely hinders the further development of bilateral relations'. Patten said that the Commission had 'consistently told China at the highest level that lifting of the embargo would be greatly assisted if they could take concrete steps in the field of human rights; steps that could convince European public opinion of the appropriateness of such action'. He noted the differences among EU members about lifting the ban with some believing 'that it is premature, citing concerns about human rights'. Patten acknowledged that 'lifting the ban should take place against a

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<sup>21</sup> Speech by The Rt Hon Chris Patten, CH, European Parliament, Strasbourg 16 November 2004, See [http://www.europa.eu.int/comm/external\\_relations/news/patten/sp04\\_483.htm](http://www.europa.eu.int/comm/external_relations/news/patten/sp04_483.htm).

background of positive and tangible steps by China to improve the human rights situation’.

On **22 November 2004**, the ministers previewed the EU-China Summit scheduled for 8 December 2004, and included in this the arms embargo. The Presidency confirmed that the ‘EU was ready to give a positive signal to China’ while calling for its concerns to be addressed by China, ‘including in the field of human rights’. It also asked for work to continue within the EU on strengthening the Code of Conduct on arms exports.

On **8 December 2004**, the EU confirmed its intention to ‘continue to work towards lifting the embargo’. According to EU officials, the Council firmly decided in December 2004 to lift the arms embargo.

Through the first four months of 2005, senior EU officials, especially Javier Solana, have continued to describe the arms embargo variously as ‘unfair’, ‘anachronistic’ and ‘insignificant’ in terms of positive influence on the policies of the current Chinese leadership.

The European parliament has challenged the view of the member states. On 14 April 2005, the Parliament approved<sup>22</sup> a resolution that, *inter alia*, called on the European Council not to lift the arms embargo on China. The omnibus resolution was the parliament’s response to an 18-page Foreign Affairs Committee Report (rapporteur Elmar Brok) on the 2003 annual report from the Council on CFSP.<sup>23</sup> On the small part of the report dealing with China and the arms embargo, the resolution recorded the sentiment of the parliament as follows:

32. “Regrets that relations with China have made progress only in the trade and economic fields, without any substantial achievement as regards human rights and democracy issues; calls, in this respect, on the Council not to lift the arms embargo and to

<sup>22</sup> By 431 votes in favour to 85 votes against with 31 abstentions.

<sup>23</sup> European Parliament, 2005-2009, Foreign Affairs Committee, ‘On the annual report from the Council to the European Parliament on the main aspects and basic choices of CFSP, including the financial implications for the general budget of the European Communities – 2003’, FINAL, A6-0062/2005, 21.3.2005.

find ways to facilitate dialogue, defuse tension and encourage disarmament in cross-strait relations;

33. Expresses its deepest concern at the large number of missiles in southern China aimed across the Taiwan Straits and at the so-called “anti-secession law” of the People’s Republic of China that in an unjustified way aggravates the situation across the Straits; calls on the People’s Republic of China and on the R.O.C. in Taiwan to resume political talks on the basis of mutual understanding and recognition in order to promote stability, democracy, human rights and the rule of law in east Asia;’

The Committee report was addressed largely to the constitutional aspects of the relationship between the existing and planned bodies of the EU that deal with common foreign and security policy (CFSP), especially the parliament on the one hand and the European Council, the planned EU foreign minister and the planned External Action Service on the other.

## China’s Calculus on Use of Force against Taiwan

If the value of sales of military related technologies or weapons systems were to double or treble within the next five years, this would contribute to an improvement China’s military capabilities. But the contribution would be miniscule and would likely take ten to twenty years to have any effect at all on the capacities of the Chinese armed forces for large scale combat operations. There is no way that sales on the scale likely to occur would significantly alter China’s calculus of risk for using force against Taiwan. This is even the assessment of the US Department of Defense, an organisation which until recently has had a reputation for being ‘hawkish’ on China.

A 2003 report by the International Crisis Group concluded that even after China increased military pressure on Taiwan in 1995, it has ‘displayed a clear preference’ for use of military coercion ‘only in a

very limited, modulated and non-lethal fashion'.<sup>24</sup> The report assessed that 'when it comes to Taiwan, China is clearly closer to the low intensity end of the conflict spectrum than to the high intensity end'. This remains the clear preference of the Chinese leadership today.

The ICG report further concluded 'there is still some way to go before China would feel itself ready to launch a major military assault. China is operating very much at the psychological or political, rather than military, level of conflict'.

This assessment is shared by the US Department of Defence: 'Beijing still has a political strategy for unification with a military component, not a military strategy with a political component. Its longstanding approach to resolving the cross-Strait standoff is multifaceted, integrating political, economic, cultural, and military strategies to exert all of its national power to dissuade Taiwan against ever crossing any red lines'.<sup>25</sup> Most importantly, the Pentagon noted that 'China does not wish to attack Taiwan', but that 'it needs to be prepared to do so for the non-military components of its strategy to be sufficiently persuasive'.

## Anti-Secession Law<sup>26</sup>

China's recently adopted anti-secession law represents no change in policy toward a more aggressive stance, though it is a response to some increase inside China for firmer action against Taiwan. To appreciate this, it is important to understand two main sets of facts. The first concerns the history of China's official statements; the second concerns the development of the legislative powers of the Chinese parliament relative to the executive power of the government.

<sup>24</sup> International Crisis Group, *Taiwan Strait II: The Risk of War*, Asia Report No. 54, 6 June 2003. The author of this FPC pamphlet was the principal contributing author to this ICG report.

<sup>25</sup> US Department of Defense, 'FY04 Report to Congress on PRC Military Power', Pursuant to the FY2000 National Defense Authorization Act, <http://www.defenselink.mil/pubs/d20040528PRC.pdf>.

<sup>26</sup> For text, see Appendix 3.

In terms of official rhetoric, the new law actually represents a hardening of China's commitment to peaceful resolution of the problem. The law mandates the exhaustion of all possible means for peaceful resolution of the dispute before resort to military means. Such language has never before been used by the Chinese government in respect of settling the Taiwan problem. But in no other respect does the law actually change the Chinese government's previous position.

In a law that sets out the obligations of the Chinese government to actively pursue all sorts of peaceful economic and political measures, there is one article that addresses the conditions under which the government would be required to use force:

In the event that the "Taiwan independence" secessionist forces should act under any name or by any means to cause the fact of Taiwan's secession from China, or that major incidents entailing Taiwan's secession from China should occur, or that possibilities for a peaceful reunification should be completely exhausted, the state shall employ non-peaceful means and other necessary measures to protect China's sovereignty and territorial integrity.

On the conditions that might give rise to use of force, the language is similar to previous Chinese official statements. For example, in 2004, the Chinese government made the following statement:

if a grave turn of events occurs leading to the separation of Taiwan from China in any name, or if Taiwan is invaded and occupied by foreign countries, or if the Taiwan authorities refuse, sine die, the peaceful settlement of cross-straits reunification through negotiations, then the Chinese government will only be forced to adopt all drastic measures possible, including the use of force, to safeguard China's sovereignty and territorial integrity.<sup>27</sup>

The balance in China's policy between possible use of force at an unspecified point in the future has been analysed at length in a

<sup>27</sup> Wang Zaixi, Vice-minister of China's Taiwan Affairs Office of the State Council, New York, 13 January 2004, as reported on the official web-site of the Taiwan Affairs Office. See <http://www.chinaembassy.org.au/eng/zt/zgtw/t58594.htm>.

series of reports by the International Crisis Group in 2003. Of some note is the third of these reports, which provides a comprehensive account of the growth in political and economic contacts across the Taiwan Strait. The report concluded that 'there is a real chance of continuing peace across the Taiwan Strait for the foreseeable future'.<sup>28</sup> The assessment depended, *inter alia*, on the presumption that the present tendency toward growing cooperation between the two entities on economic and social matters continues'; and the 'broader international community ... continues to hold the line against formal recognition of Taiwanese sovereign independence'.

The ICG report noted that 'China is now Taiwan's principal export market, and Taiwan is a major source of foreign investment in China'. The report observed that the 'two governments are also edging closer to a formal relationship in other areas of policy, such as joint offshore energy development, fisheries and customs activities', and 'are now meeting formally for the first time ever at officials' level in the context of the World Trade Organisation (WTO)'.

The second important set of contextual information concerns the powers of China's parliament, the National People's Congress (NPC) in the area of national defence. The NPC, often characterised as a rubber stamp parliament of the Soviet kind, because it never threatens legislation introduced by the government, has never exercised real power in military matters. The primary decision-making body in military affairs has been the Central Military Commission (CMC), a senior military committee of the Communist Party of China. The National defence Law passed by the NPC in 1997 provides for all military authority to lie with the Communist party not the state apparatus, in apparent contravention of the country's 1982 constitution.

One need only look at the locus of war powers in other political systems, such as the USA and UK, to understand that even in liberal democracies, the decision to go to war is not a power that rests with

<sup>28</sup> International Crisis Group, 'Taiwan Strait III: The Chance of Peace', Asia Report N°55, 6 June 2003. See <http://www.crisisgroup.org/home/index.cfm?id=1648&l=1>.

the parliament, but rather is one that resides exclusively with the executive.

It is of some note however, that the Taiwan anti-secession law also empowers the State Council, and not just the CMC, to decide jointly with the latter on the use of force. This is of particular importance, since elements of the armed forces, including within the CMC, have been more hawkish on Taiwan issues.

## China's Military Industry and Weapons Imports

One of the leading China security specialists in the USA, Bates Gill of CSIS, assessed as recently as March 2005 that lifting the arms embargo imposed on 1989 will have little impact on China's military technology development. He observed: 'Lifting the embargo in and of itself will have little impact on technology flows of concern to China'.<sup>29</sup> Gill went on to say:

under the terms of the now-nearly-16-year-old embargo, European firms have already been able to provide Chinese counterparts with militarily-relevant technologies. This is no less true for U.S., Japan, and even Taiwan exports of advanced technologies to China. The fact is that the nature of advanced technologies today and their broadening applications to militarily-relevant purposes have far-outstripped the ability of a simple declaration of intent pronounced a decade and a half ago to truly stem the flow of sensitive technologies to China.

According to the US Department of Defense, 'self-sufficiency will continue to be China's long-term defense industrial goal'. The Pentagon also assessed that if EU eased its restrictions, 'Beijing likely will continue to look to Russia to fulfil its military procurement goals' and 'Russia most likely will remain the primary supplier of China's advanced conventional weapons' The Pentagon also

<sup>29</sup> Testimony before the Committee on Foreign Relations, United States Senate 'Lifting of the EU Arms Embargo on China', 16 March 2005, A Statement by Bates Gill, Freeman Chair in China Studies, <http://www.csis.org/hill/ts050316gill.pdf>.

assesses that self-sufficiency, nor foreign imports, will remain the main strategy of China's military industries and procurement planning. China uses foreign imports either to plug immediate gaps in capability (such as modern air defence fighters and surface to air missiles for air defence) or to provide a longer term exposure for its armed forces and defence industry designers to limited numbers of modern systems. The level of expenditure by China on imports from Russia has averaged about €1.5 billion per year for the last decade.

'Arms agreements between China and FSU governments since 1991 total \$20 billion, with actual deliveries to date estimated at \$12 billion. Russia, Ukraine, and Belarus appear to be China's chief sources of weapons and materiel, reportedly providing in excess of 95 percent of all China's arms imports since 1990. Among FSU governments, Russia clearly is China's largest arms supplier, accounting for over 90 percent of all FSU arms sold to China over the past decade. In 2003, China's primary focus was aerospace buildup, spending more than \$1 billion dollars on 24 Russian advanced fighter aircraft alone.'

## China's Decision-making on Human Rights

The human rights situation in China remains bad. One need only read the US State Department's annual report.<sup>30</sup> But so it is in other countries on which the EU and USA have no arms embargo and with which they have solid strategic relationships. The best example of this is Saudi Arabia. According to the State Department, Saudi Arabia's 'human rights record remained poor overall with continuing serious problems, despite some progress'.<sup>31</sup> The test of a policy like the 1989 arms embargo therefore cannot merely be reference to a bad human rights record of the target country.

<sup>30</sup> See US State Dept, Country Reports on Human Rights Practices,- 2004, (China) Released by the Bureau of Democracy, Human Rights, and Labor, February 28, 2005, <http://www.state.gov/g/drl/rls/hrrpt/2004/41640.htm>.

<sup>31</sup> US State Department, Country Reports on Human Rights Practices,- 2004, (Saudi Arabia) Released by the Bureau of Democracy, Human Rights, and Labor, February 28, 2005, <http://www.state.gov/g/drl/rls/hrrpt/2004/41731.htm>.

Several other considerations need to be taken into account. These include the linkage between a policy measure, such as the arms embargo, and the target country's human rights decision-making. A second important consideration might be whether the human rights situation has improved in broad terms, in spite of continued repression or abuses. The EU has decided, correctly, that on both counts, there is justification for lifting the 1989 ban.

In the area of human rights, the arms ban was imposed mainly to register opposition to use of lethal force by the armed forces on a large scale against unarmed protesters to end peaceful demonstrations in 1989. The two leaders who made that decision, Deng Xiaoping and Yang Shangkun, are now dead. The other main actor, the leader who signed the martial law declaration in 1989, Li Peng, has now retired. The arms ban is the last measure among others, all since lifted, that was directed at those leaders.

Any future arms sales, like their current restrictions, would have no impact on the attitudes of China's current leaders toward the setting of domestic human rights policies. China's leadership priorities in the international sphere, which concentrate on attracting foreign investment and promoting trade, have not been affected by the arms ban. Their priorities in the domestic sphere, of promoting economic growth while retaining a monopoly on political power for the Communist Party, have not been affected by the ban. China's continued repression of human rights has not been affected by the ban. But equally, the great liberalisation and improvement in observance of human rights in China have not been affected by the arms ban. The expansion of China's police forces and anti-riot capabilities<sup>32</sup> has not been affected by the arms ban.

The arms ban is simply ineffectual as any form of pressure on China's human rights performance. The argument advanced by some that lifting of the arms ban would send the wrong signal on

<sup>32</sup> See Greg Austin, 'China's Power: Searching for Stable Domestic Foundations', in Yongjin Zhang and Greg Austin (eds), *Power and Responsibility in Chinese Foreign Policy*, Asia Pacific Press, Canberra, 2001, pp. 94-95.



human rights make no effort to describe the dynamics of how such a signalling process affects policy in China. They make no effort to assess the relative weight in this 'signalling process' of large scale financial flows to China from the USA, Japan and the EU and large scale trade and investment relations that they have with China. Moreover, any reproachful signal that the arms ban was supposed to send to China on human rights has been completely outweighed by the lifting of all other sanctions, including the ban on military to military ties.

## China and the 1989 Ban in US Domestic Politics

There is no more sensitive issue in US foreign policy as far as the Congress is concerned than China. Even Cuba, Iraq, North Korea and Burma have not attracted the hostility, virulence and extremism that China issues have so consistently attracted in the last sixteen years since the repressions in Tiananmen Square.

As the foremost scholar of US-China relations, Harry Harding, reported, a sanctions bill passed the US House of Representatives unanimously and in the Senate by a vote of 81-10 at the end of June 1989.<sup>33</sup> It suspended investment guarantees, Eximbank loans, export licenses for munitions and police equipment, liberalisation of export controls, satellite export permits, and the implementation of the nuclear cooperation agreement. It opposed further lending by international financial institutions. The legislation linked the lifting of any sanction to a Presidential certification either that China had made progress on a programme of political reform or that a waiver was in the national interest of the USA. Harding reports that the 'program of political reform' was defined to include the lifting of martial law, a halt to executions and other reprisals against the demonstrators, the release of political prisoners, increased respect for human rights, an end to the jamming of Voice of America, and

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<sup>33</sup> Harry Harding, *A Fragile Relationship: The United States and China since 1972*, Brookings, Washington DC, 1992, pp. 232-233.

greater access to foreign journalists. This law mirrored much of what the White House had previously announced.

Nevertheless, as Harding relates, there were inflamed disputes between the White House and Congress over even more robust sanctions legislation.<sup>34</sup> He noted, correctly at the time of writing (1992), and with some prescience for the entire time since then, that the 'Tiananmen crisis has a deep, and probably lasting, impact on American attitudes toward China'.<sup>35</sup> Even more importantly, these debates 'aroused long-standing differences between the White House and the Congress over the relative power of the two branches of government'.<sup>36</sup> These struggles have persisted until now and directly shape current Congressional hostility to lifting the arms ban.

The USA was one of the first to move to break (or ease) the political sanctions imposed in 1989, and partly as a result of that, through the last sixteen years, the sanctions issue has taken on a life in US domestic politics about China's human rights record that is highly charged. The domestic politics of the US relationship with China remains fiercely contested within the senior levels of the US Administration, with persistent disputes all the way up to the President. It must be noted that the loudest critics of the plan to lift the remaining 1989 sanction are as critical of the US government for its approach too. Many in the USA who attack the EU on this point are using the EU as a proxy or whipping boy in the domestic debate, both the public one and the confidential one in the President's inner circle.

The history of hostility toward China's government in the US Congress since 1989 has been well documented and recorded in resolution after resolution, and in enacted laws. The list of issues which have triggered strong anti-China measures in Congress between 1989 and now is a long one indeed. No other country has been subject to such Congressional recrimination and punitive legislation in those sixteen years as China. The list of actions by

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<sup>34</sup> *Ibid.*, p. 234.

<sup>35</sup> *Ibid.*, p. 239.

<sup>36</sup> *Ibid.*, p. 244.

China, confirmed but often only alleged, which sparked Congressional anger in the form of a Congressional investigation, resolution or legislation included:

- sustained human rights abuses
- sales of anti-shipping missiles to Iran
- aggression in the South China Sea
- breaches of the missile technology control regime
- transfer of nuclear weapons technology to Pakistan
- abuse of prison labour
- failure to protect intellectual property rights
- harvesting of organs from executed 'criminals'
- nuclear weapons testing
- spying (several cases)
- provision of chemical weapons precursors to Iran
- buying access to the Clinton White House
- people smuggling
- forced abortions
- piracy
- illicit acquisition of US space technology
- detention of US Air Force personnel and their USAF aircraft that was forced to land in Hainan
- military pressure on Taiwan
- policy toward Tibet
- policy toward Xinjiang
- religious persecution
- support of Iraqi air defence systems against US forces
- breaches of WTO rules
- stealing US jobs through maintaining a non-convertible currency.

Many of the criticism of China have been justified, but as the US Administration often argues, there is considerable room for doubt about the wisdom of using legislative mechanisms as a means of addressing these complex foreign policy problems. There are powerful jingoistic forces at play which often get to control the agenda. This has been evident in a number of measures, not least the creation of a standing Commission, the bipartisan U.S.-China Economic and Security Review Commission, established in 2000 to

'monitor, investigate, and submit to Congress an annual report on the national security implications of the bilateral trade and economic relationship' between the USA and China, and 'to provide recommendations for legislative and administrative action'. In 2004, the Commission called on the Congress as well as the Bush administration to 'conduct a fresh assessment of the one-China policy, given the changing realities in China and Taiwan' with a view to possibly recognising Taiwan as a separate country. Such a measure, if enacted, would be much more likely to provoke war in the Taiwan Strait than lifting the EU arms embargo.

The grounds for anti-China positioning in the US Congress have shifted in the last sixteen years since the 1989 sanctions were imposed. Now one of the main issues is China's large trade surplus, which many in the Congress see as taking American jobs.<sup>37</sup> Several members of Congress have threatened to impose retaliatory tariffs if China does not allow a flexible exchange rate for its currency.

This shifting ground in the domestic politics of US relations with China has been evident in the implementation of the 1989 arms ban. For many years now, the USA (like the EU and its member states) has not regarded the so-called ban on arms sales as a total prohibition on the sale of military related technologies. The USA consistently, under both President Bush and President Clinton, provided exemptions to the Tiananmen sanctions on sale of dual use technologies, and made sales far more strategically important to China's overall military capability that anything EU members have done or contemplated to date.<sup>38</sup>

Another veteran specialist of US-China relations, David Lampton, has offered the view that China offers a unique stage in American politics for 'entrepreneurial' politicians who, to win votes, 'must

<sup>37</sup> Peronet Despeignes, 'China and Japan reject Bush's currency pleas', *USA Today*, 20 October 2003, [http://www.usatoday.com/news/washington/2003-10-19-bush-china-japan\\_x.htm](http://www.usatoday.com/news/washington/2003-10-19-bush-china-japan_x.htm).

<sup>38</sup> Moreover, the USA has consistently made exceptions to its linkage between human rights diplomacy and restricting arms sales in respect of both Saudi Arabia and Pakistan, the former with a human rights record not that distinguishable from China's, and the latter the subject of specific sanctions measures on several occasions.

identify dramatic problems for which their proposed remedies appear to be plausible solutions'.<sup>39</sup> He observed that 'American interest in China distinguishes it from most other nations in the world'. He noted that 'China combines a scale, complexity, residual communist ideology and obscurity that makes it a stage upon which Americans can act out their greatest hopes and their worst fears'. He suggested that the actors on this stage are what arch conservative Pat Buchanan once called 'a great coalition of human rights activists, Christians appalled at China's persecution of fellow Christians, a right to life movement sickened by Beijing's barbaric population policy, union members concerned over export of factories and jobs and foreign policy realists who see in China a rising menace to Asian peace and America's position in the Asia Pacific'.<sup>40</sup>

Based on all of the foregoing, it is not unreasonable to conclude that the 'strength of feeling' in the USA about the EU's planned lifting of the 1989 China-specific embargo is based largely on ignorance about the EU arms restrictions and of China's leadership decision-making processes; on lack of familiarity with the mixed record of sanctions and embargos as a tool of policy; or on deliberate misrepresentation of the facts. The 'strength of feeling' is actually built on domestic political considerations, as most embargo policies are, and not on any evaluation of the effectiveness of the embargo in changing the policy of the target state. The 'strength of feeling' comes from several quarters, each with quite distinct interests, which have allied to pressure President Bush largely for reasons un-related to the lifting of the 1989 China-specific embargo.

## Conclusions and Recommendations

For the foreseeable future, even if this China-specific ban linked to the 1989 events is lifted, the European Union (EU) and its member states will limit the flow of their weapons and military-related technology to China because of standing concerns about human

<sup>39</sup> David Lampton, *Same Bed Different Dreams: Managing US-China Relations 1989-2000*, University of California Press, Berkeley CA, 2001, p. 307.

<sup>40</sup> *Ibid.*, pp. 307-308.

rights in the country and peace in the Taiwan Strait. This is a good policy, and there is an excellent framework for it, though a general one and not one targeted specifically at China.

Sales of this nature, even if they were doubled or trebled within the next five years, would improve China's military capabilities marginally but would be insignificant in affecting China's calculus of risk for using force against Taiwan. The sales, like their current restrictions, will have no impact on the attitudes of China's leaders to the conduct of their domestic human rights policies. On the human rights front, the 1989 arms embargo has probably had negligible effect by itself.

It is time for the EU to face down this alliance of special pleaders trying to preserve an inconsequential, largely symbolic measure that is so visibly contradicted by the massive flows of capital from Europe and the USA, and by the burgeoning relationships between their armed forces and those of China. To do this, the EU must launch an even more vigorous public diplomacy campaign to convince the US Congress that it will continue to restrict the sales of weapon systems to China, much as the USA does it itself, even if the 1989 China-specific ban is written off the books.

This public diplomacy will not be easy. It will need significant resources and substantial involvement of the most senior political figures and well-informed specialists. Leading EU member states, such as Britain, France, Italy and Germany must act together to deliver a common message to the USA.

This strong campaign must be directed more at the Congress than at the Administration because the EU has been more successful in selling its proposed policy change to the Administration. It has better knowledge levels about the EU policies and a generally more business-like approach, whereas the Congress is more ideological and more politically mobilised against China for several quite disparate reasons (human rights, Taiwan policy and the trade deficit). The Administration has not been willing to use its own political capital with Congress to convince it to be more reasonable.

Even when the 1989 arms ban is lifted, but especially in the first one to two years, the EU will need to continue working much more vigorously than at present with Congress on these issues to dampen the inevitable tensions that will arise.

Perhaps it is time for the European Council, if it is to have an EU Foreign Minister, to equip that post with the massive public diplomacy assets that it demands, not just for the China case, but for the other big trans-Atlantic issues as well.

## Appendix 1: EU Sanctions Decision 1989

The European Council, recalling the declaration of the Twelve of 6 June, strongly condemns the brutal repression taking place in China. It expresses its dismay at the pursuit of executions in spite of all the appeals of the international community. It solemnly requests the Chinese authorities to stop the executions and to put an end to the repressive actions against those who legitimately claim their democratic rights.

The European Council requests the Chinese authorities to respect human rights and to take into account the hopes for freedom and democracy deeply felt by the population. It underlines that this is an essential element for the pursuit of the policy of reforms and openness that has been supported by the European Community and its Member States. (...)

In the present circumstances, the European Council thinks it necessary to adopt the following measures:

- raising the issue of human rights in China in the appropriate international fora; asking for the admittance of independent observers to attend the trials and to visit the prisons;
- interruption by the Member States of the Community of military cooperation and an embargo on trade in arms with China;
- suspension of bilateral ministerial and high-level contacts;
- postponement by the Community and its Member States of new cooperation projects;
- reduction of programmes of cultural, scientific and technical cooperation to only those activities that might maintain a meaning in the present circumstances;

- prolongation by the Member States of visas to the Chinese students who wish it.

Taking into account the climate of uncertainty created in the economic field by the present policy of the Chinese authorities, the European Council advocates the postponement of the examination of new requests for credit insurance and the postponement of the examination of new credits of the World Bank."<sup>41</sup>

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<sup>41</sup> Declaration of European Council, Madrid, 27.6.1989, [http://www.europa.eu.int/comm/external\\_relations/cfsp/sanctions/asures.htm#1](http://www.europa.eu.int/comm/external_relations/cfsp/sanctions/asures.htm#1).

## Appendix 2: EU Code of Conduct on Arms Export

The Council of the European Union,

BUILDING on the Common Criteria agreed at the Luxembourg and Lisbon European Councils in 1991 and 1992,

RECOGNISING the special responsibility of arms exporting states,

DETERMINED to set high common standards which should be regarded as the minimum for the management of, and restraint in, conventional arms transfers by all EU Member States, and to strengthen the exchange of relevant information with a view to achieving greater transparency,

DETERMINED to prevent the export of equipment which might be used for internal repression or international aggression, or contribute to regional instability,

WISHING within the framework of the CFSP to reinforce their cooperation and to promote their convergence in the field of conventional arms exports,

NOTING complementary measures taken by the EU against illicit transfers, in the form of the EU Programme for Preventing and Combating Illicit Trafficking in Conventional Arms,

ACKNOWLEDGING the wish of EU Member States to maintain a defence industry as part of their industrial base as well as their defence effort,

RECOGNISING that states have a right to transfer the means of self-defence, consistent with the right of self-defence recognised by the UN Charter,

have adopted the following Code of Conduct and operative provisions:

#### **CRITERION ONE**

**Respect for the international commitments of EU member states, in particular the sanctions decreed by the UN Security Council and those decreed by the Community, agreements on non-proliferation and other subjects, as well as other international obligations**

An export licence should be refused if approval would be inconsistent with, *inter alia*:

- a) the international obligations of member states and their commitments to enforce UN, OSCE and EU arms embargoes;
- b) the international obligations of member states under the Nuclear Non-Proliferation Treaty, the Biological and Toxin Weapons Convention and the Chemical Weapons Convention;
- c) their commitments in the frameworks of the Australia Group, the Missile Technology Control Regime, the Nuclear Suppliers Group and the Wassenaar Arrangement;
- d) their commitment not to export any form of anti-personnel landmine.

#### **CRITERION TWO**

**The respect of human rights in the country of final destination**

Having assessed the recipient country's attitude towards relevant principles established by international human rights instruments, Member States will:

- a) not issue an export licence if there is a clear risk that the proposed export might be used for internal repression;
- b) exercise special caution and vigilance in issuing licences, on a case-by-case basis and taking account of the nature of the equipment, to countries where serious violations of human rights have been established by the competent bodies of the UN, the Council of Europe or by the EU.

For these purposes, equipment which might be used for internal repression will include, *inter alia*, equipment where there is evidence of the use of this or similar equipment for internal repression by the proposed end-user, or where there is reason to believe that the equipment will be diverted from its stated end-use or end-user and used for internal repression. In line with operative paragraph 1 of this Code, the nature of the equipment will be considered carefully, particularly if it is intended for internal security purposes.

Internal repression includes, *inter alia*, torture and other cruel, inhuman and degrading treatment or punishment, summary or arbitrary executions, disappearances, arbitrary detentions and other major violations of human rights and fundamental freedoms as set out in relevant international human rights instruments, including the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights.

#### **CRITERION THREE**

**The internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts**

Member States will not allow exports which would provoke or prolong armed conflicts or aggravate existing tensions or conflicts in the country of final destination.

#### **CRITERION FOUR**

**Preservation of regional peace, security and stability**

Member States will not issue an export licence if there is a clear risk that the intended recipient would use the proposed export aggressively against another country or to assert by force a territorial claim. When considering these risks, EU Member States will take into account *inter alia*:

- a) the existence or likelihood of armed conflict between the recipient and another country;
- b) a claim against the territory of a neighbouring country which the recipient has in the past tried or threatened to pursue by means of force;

- c) whether the equipment would be likely to be used other than for the legitimate national security and defence of the recipient;
- d) the need not to affect adversely regional stability in any significant way.

#### **CRITERION FIVE**

**The national security of the member states and of territories whose external relations are the responsibility of a Member State, as well as that of friendly and allied countries**

Member States will take into account:

- a) the potential effect of the proposed export on their defence and security interests and those of friends, allies and other member states, while recognising that this factor cannot affect consideration of the criteria on respect of human rights and on regional peace, security and stability;
- b) the risk of use of the goods concerned against their forces or those of friends, allies or other member states;
- c) the risk of reverse engineering or unintended technology transfer.

#### **CRITERION SIX**

**The behaviour of the buyer country with regards to the international community, as regards in particular to its attitude to terrorism, the nature of its alliances and respect for international law**

Member States will take into account *inter alia* the record of the buyer country with regard to:

- a) its support or encouragement of terrorism and international organised crime;
- b) its compliance with its international commitments, in particular on the non-use of force, including under international humanitarian law applicable to international and non-international conflicts;
- c) its commitment to non-proliferation and other areas of arms control and disarmament, in particular the signature, ratification and implementation of relevant arms control and

disarmament conventions referred to in sub-paragraph b) of Criterion One.

#### **CRITERION SEVEN**

**The existence of a risk that the equipment will be diverted within the buyer country or re-exported under undesirable conditions**

In assessing the impact of the proposed export on the importing country and the risk that exported goods might be diverted to an undesirable end-user, the following will be considered:

- a) the legitimate defence and domestic security interests of the recipient country, including any involvement in UN or other peace-keeping activity;
- b) the technical capability of the recipient country to use the equipment;
- c) the capability of the recipient country to exert effective export controls;
- d) the risk of the arms being re-exported or diverted to terrorist organisations (antiterrorist equipment would need particularly careful consideration in this context).

#### **CRITERION EIGHT**

**The compatibility of the arms exports with the technical and economic capacity of the recipient country, taking into account the desirability that states should achieve their legitimate needs of security and defence with the least diversion for armaments of human and economic resources**

Member States will take into account, in the light of information from relevant sources such as UNDP, World Bank, IMF and OECD reports, whether the proposed export would seriously hamper the sustainable development of the recipient country. They will consider in this context the recipient country's relative levels of military and social expenditure, taking into account also any EU or bilateral aid.

## OPERATIVE PROVISIONS

1. Each EU Member State will assess export licence applications for military equipment made to it on a case-by-case basis against the provisions of the Code of Conduct.
2. This Code will not infringe on the right of Member States to operate more restrictive national policies.
3. EU Member States will circulate through diplomatic channels details of licences refused in accordance with the Code of Conduct for military equipment together with an explanation of why the licence has been refused. The details to be notified are set out in the form of a draft pro-forma at Annex A. Before any Member State grants a licence which has been denied by another Member State or States for an essentially identical transaction within the last three years, it will first consult the Member State or States which issued the denial(s). If following consultations, the Member State nevertheless decides to grant a licence, it will notify the Member State or States issuing the denial(s), giving a detailed explanation of its reasoning.

The decision to transfer or deny the transfer of any item of military equipment will remain at the national discretion of each Member State. A denial of a licence is understood to take place when the member state has refused to authorise the actual sale or physical export of the item of military equipment concerned, where a sale would otherwise have come about, or the conclusion of the relevant contract. For these purposes, a notifiable denial may, in accordance with national procedures, include denial of permission to start negotiations or a negative response to a formal initial enquiry about a specific order.

4. EU Member States will keep such denials and consultations confidential and not to use them for commercial advantage.
5. EU Member States will work for the early adoption of a common list of military equipment covered by the Code, based on similar national and international lists. Until then, the Code will operate on

the basis of national control lists incorporating where appropriate elements from relevant international lists.

6. The criteria in this Code and the consultation procedure provided for by paragraph 3 of the operative provisions will also apply to dual-use goods as specified in Annex 1 of Council Decision 94/942/CFSP as amended, where there are grounds for believing that the end-user of such goods will be the armed forces or internal security forces or similar entities in the recipient country.
7. In order to maximise the efficiency of this Code, EU Member States will work within the framework of the CFSP to reinforce their cooperation and to promote their convergence in the field of conventional arms exports.
8. Each EU Member State will circulate to other EU Partners in confidence an annual report on its defence exports and on its implementation of the Code. These reports will be discussed at an annual meeting held within the framework of the CFSP. The meeting will also review the operation of the Code, identify any improvements which need to be made and submit to the Council a consolidated report, based on contributions from Member States.
9. EU Member States will, as appropriate, assess jointly through the CFSP framework the situation of potential or actual recipients of arms exports from EU Member States, in the light of the principles and criteria of the Code of Conduct.
10. It is recognised that Member States, where appropriate, may also take into account the effect of proposed exports on their economic, social, commercial and industrial interests, but that these factors will not affect the application of the above criteria.
11. EU Member States will use their best endeavours to encourage other arms exporting states to subscribe to the principles of this Code of Conduct.
12. This Code of Conduct and the operative provisions will replace any previous elaboration of the 1991 and 1992 Common Criteria.



## Appendix 3: Anti-Secession Law<sup>42</sup>

**Article 1** This Law is formulated, in accordance with the Constitution, for the purpose of opposing and checking Taiwan's secession from China by secessionists in the name of "Taiwan independence", promoting peaceful national reunification, maintaining peace and stability in the Taiwan Straits, preserving China's sovereignty and territorial integrity, and safeguarding the fundamental interests of the Chinese nation.

**Article 2** There is only one China in the world. Both the mainland and Taiwan belong to one China. China's sovereignty and territorial integrity brook no division. Safeguarding China's sovereignty and territorial integrity is the common obligation of all Chinese people, the Taiwan compatriots included.

Taiwan is part of China. The state shall never allow the "Taiwan independence" secessionist forces to make Taiwan secede from China under any name or by any means.

**Article 3** The Taiwan question is one that is left over from China's civil war of the late 1940s.

Solving the Taiwan question and achieving national reunification is China's internal affair, which subjects to no interference by any outside forces.

**Article 4** Accomplishing the great task of reunifying the motherland is the sacred duty of all Chinese people, the Taiwan compatriots included.

**Article 5** Upholding the principle of one China is the basis of peaceful reunification of the country.

To reunify the country through peaceful means best serves the fundamental interests of the compatriots on both sides of the Taiwan

<sup>42</sup> (Adopted at the Third Session of the Tenth National People's Congress on 14 March 2005). Xinhua, 14 March 2005, [http://news.xinhuanet.com/english/2005-03/14/content\\_2694180.htm](http://news.xinhuanet.com/english/2005-03/14/content_2694180.htm).

Straits. The state shall do its utmost with maximum sincerity to achieve a peaceful reunification.

After the country is reunified peacefully, Taiwan may practice systems different from those on the mainland and enjoy a high degree of autonomy.

**Article 6** The state shall take the following measures to maintain peace and stability in the Taiwan Straits and promote cross-Straits relations:

- (1) to encourage and facilitate personnel exchanges across the Straits for greater mutual understanding and mutual trust;
- (2) to encourage and facilitate economic exchanges and cooperation, realize direct links of trade, mail and air and shipping services, and bring about closer economic ties between the two sides of the Straits to their mutual benefit;
- (3) to encourage and facilitate cross-Straits exchanges in education, science, technology, culture, health and sports, and work together to carry forward the proud Chinese cultural traditions;
- (4) to encourage and facilitate cross-Straits cooperation in combating crimes; and
- (5) to encourage and facilitate other activities that are conducive to peace and stability in the Taiwan Straits and stronger cross-Straits relations.

The state protects the rights and interests of the Taiwan compatriots in accordance with law.

**Article 7** The state stands for the achievement of peaceful reunification through consultations and negotiations on an equal footing between the two sides of the Taiwan Straits. These consultations and negotiations may be conducted in steps and phases and with flexible and varied modalities.

The two sides of the Taiwan Straits may consult and negotiate on the following matters:

- (1) officially ending the state of hostility between the two sides;
- (2) mapping out the development of cross-Straits relations;

- (3) steps and arrangements for peaceful national reunification;
- (4) the political status of the Taiwan authorities;
- (5) the Taiwan region's room of international operation that is compatible with its status; and
- (6) other matters concerning the achievement of peaceful national reunification.

**Article 8** In the event that the "Taiwan independence" secessionist forces should act under any name or by any means to cause the fact of Taiwan's secession from China, or that major incidents entailing Taiwan's secession from China should occur, or that possibilities for a peaceful reunification should be completely exhausted, the state shall employ non-peaceful means and other necessary measures to protect China's sovereignty and territorial integrity.

The State Council and the Central Military Commission shall decide on and execute the non-peaceful means and other necessary measures as provided for in the preceding paragraph and shall promptly report to the Standing Committee of the National People's Congress.

**Article 9** In the event of employing and executing non-peaceful means and other necessary measures as provided for in this Law, the state shall exert its utmost to protect the lives, property and other legitimate rights and interests of Taiwan civilians and foreign nationals in Taiwan, and to minimize losses. At the same time, the state shall protect the rights and interests of the Taiwan compatriots in other parts of China in accordance with law.

**Article 10** This Law shall come into force on the day of its promulgation.

## Appendix 4: Extract from 2003 ICG Report on Taiwan Strait<sup>43</sup>

An invasion of Taiwan by China cannot be rationally related to two of Beijing's most important objectives: reunification and sustained national economic development. If China did launch an invasion it might well, whatever its ballistic missile capability, lack the military capability to succeed, particularly if the U.S. intervened, and even in its best case scenario, would not be able to subjugate Taiwan without large scale loss of life. Such use of force could certainly be expected to lead to recognition of Taiwan, even an occupied Taiwan, as an independent sovereign country by major powers such as the U.S. and the EU. The subsequent domestic repression in Taiwan over a protracted period under a China-installed regime would ensure a total breach between China and the developed world. Such a breach would bring a near total end to China's substantial exports to the developed world and produce massive unemployment in its coastal cities at a time when domestic political stability is under severe strains.

China also faces severe constraints for lower level military options. During the present decade, it will not be able to field a force large enough or capable enough to conduct an effective blockade if Taiwan chooses to resist. Nor could it count on being able to do so at any later time, except perhaps in the unlikely event that Russia or some other highly developed military power were willing to supply it with massive numbers of modern weapons systems and platforms. Indeed, on the basis of current trends, it is unlikely to be able to acquire air superiority needed to execute even a partial blockade. Its entire fleet of modern submarines, even if it rises to 40 boats or so in around seven years time, would probably not be able to execute the naval component of such an action, and the acquisition of major surface combatants is likely to continue on a replacement basis for older vessels rather than be directed at an increase in numbers.

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<sup>43</sup> International Crisis Group, 'Taiwan Strait II: The Risk of War', Asia Report N° 54, 6 June 2003, <http://www.crisisgroup.org/home/index.cfm?id=2957&l=1>.

For these reasons, if China should feel the need to escalate the 'war' with Taiwan, it will seek to exhaust a variety of non-lethal levers it has at its disposal before it will even consider combat hostilities seriously. These include information warfare, covert operations and unconventional provocations designed to create political divisions in Taiwan. These measures, though non-lethal, would carry a risk of escalation that cannot be dismissed.

The validity of these assessments about China operating at the political rather than military level of conflict is borne out to a considerable degree by Taiwan's own policies and military posture. In 1991, Taiwan formally dropped its policy of armed confrontation with China, and it has continued to lower its defence burden accordingly. Even though the military threat from China resurfaced prominently in 1995, Taiwan has not made the sort of massive new investment in defence capability and defence mobilisation that this might have suggested. It has been satisfied since 1995, as it was before, to use the robustness of its defence posture essentially for political purposes, to underpin its distancing from the 'one China' principle and as a means of winning international political support for an independence strategy, especially in the U.S. The national defence posture premised on a politico-military threat from China (rather than a threat of invasion) also supports building a new Taiwan identity and provides a basis for claims to de jure independence, without seriously disturbing the otherwise peaceful development of Taiwan's economy.

All that said, the risk of war in the Taiwan Strait must continue to be taken seriously. Neither principal is likely to embark consciously on a war but there is a significant possibility that the calibrations made in policies of threat of force or employment of non-lethal measures by Beijing, or in response by Taiwan or the U.S., may not be exact. A cycle of escalation and counter-escalation is quite conceivable, at each stage of which the political difficulties and costs of disengagement would be greater. There is need, therefore, for the parties themselves and the U.S. to undertake, both unilaterally and between each other, confidence building and transparency steps to lower the risk of miscalculation and misunderstanding that could otherwise lead to serious military consequences.

Many of the elements needed for reducing military tensions in the Taiwan Strait and military confidence building are in place (such as mutual observance of a tacit military separation zone in the middle of the Strait). But there is considerable room for improvement, especially in some areas of military readiness (such as a reduction in China's missile deployments). Apart from removing these missiles, not much can actually be achieved in changing military deployments. The bigger issues are transparency and managing the perceptions of the military situation in the Strait. Both sides are too willing to use point scoring about military deployments, and this overshadows the visible progress in civil cooperation, especially the prospect for establishing comprehensive direct links and joint oil exploration in the middle of the Strait.

In this environment, the responses of the U.S. have carried both positive and negative consequences. Washington's determination to oppose Chinese intimidation and possible use of force is clearly the right policy. But there has to be some doubt whether its armed forces are the best instrument to which to give priority in conducting that policy. China is far more responsive to incentive-based policies, related to investment and technology transfer, than it is to threat-based sanctions or attempts at deterrence. One thing is certain: the information dominance of the U.S., based on its far superior and near real-time intelligence capabilities, gives it capacities for crisis management and leadership that neither Taiwan nor China can match. This strength of the U.S. needs to be brought into play more effectively in the interests of peace in the Taiwan Strait.

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