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[From National Security Archive](#)

Washington, D.C., October 16, 2020 - Over the years, aerial and naval encounters have threatened to destabilize U.S.-China relations as the two powers contest each other's rights in international airspace and waters. A major incident occurred on 31 March 2001 (Washington time) when a U.S. EP-3 reconnaissance aircraft made an emergency landing on China's Hainan Island after a Chinese People's Liberation Air Force aircraft collided with it in international airspace, some 62 miles from Hainan. Today, the National Security Archive is publishing for the first time "talking points" and position papers justifying the U.S. position in the EP-3 crisis prepared for Secretary of Defense Donald Rumsfeld. The documents are part of a release of Rumsfeld "snowflakes" acquired through an Archive lawsuit against the Pentagon.

In April 2001, the National Security Archive [published](#) several documents from 1969-1970 to contextualize the EP-3 incident as the latest moment in a long and complex history of U.S. aerial reconnaissance activity over and near Chinese territory, which sometimes resulted in mishaps. Declassified archival material from the first year of the Nixon administration sheds light on Cold War policy on reconnaissance flights near Chinese territory. The documentation confirms how risky the policy was: before April 1969, U.S. reconnaissance aircraft could fly as close as twenty miles from the Chinese coast.

Not surprisingly, U.S. policymakers have been reluctant to acknowledge reconnaissance flight activity, much less offer apologies when incidents occurred. Ironically, an incident that elicited an internal State Department policy review took place on Hainan Island, where a U.S. pilotless reconnaissance aircraft alighted in February 1970. To retain U.S. freedom of action to fly reconnaissance missions, State Department official Harry Thayer recommended that the United States refrain from offering an apology in the event the Chinese made a formal complaint. That freedom-of-action approach remained in effect at

the time of the EP-3 incident in 2001 (and probably does to date), even when the balance of forces in East Asia has become considerably less advantageous to Washington than it was in 1970.

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by William Burr

On 31 March 2001 (Washington time), a U.S. EP-3 reconnaissance aircraft made an emergency landing on China's Hainan Island after a Chinese People's Liberation Air Force aircraft collided with it in international airspace, some 62 miles from Hainan. A few days after the incident, Secretary of Defense Donald Rumsfeld received "talking points" from Defense Department lawyers, published today for the first time, who argued that if the pilot was flying so close underneath the EP-3 as reported, the pilot violated the "due regard" principle of international law. In addition, the pilot's action was "provocative and dangerous and most probably resulted in the collision." Thus, the U.S. refused to apologize for the incident as the Chinese had demanded. The talking points memo is one of the thousands of Rumsfeld "snowflake" that have been secured through a Freedom of Information Act (FOIA) lawsuit by the National Security Archive against the Defense Department, litigated on a pro bono basis by the Skadden Arps law firm.

The EP-3's crew of 24 landed safely but the Chinese held them during nearly two weeks of tense negotiation (although visits by senior U.S. military officers were allowed). On 12 April 2001, however, the Chinese government released the crew after the United States expressed regret for the loss of the pilot's life and for not consulting with the Chinese before landing the aircraft.

Washington rejected Beijing's demands for an apology and its insistence that the overflight violated the 200-mile Exclusive Economic Zone permitted by the of the Law of the Sea Convention. Defense Department lawyers argued that the LOSC did not ban military flights within the zone and that Chinese pilots had been contravening international law by taking an increasingly aggressive approach toward U.S. reconnaissance flights, with the EP-3 incident exemplifying the problem.^[1] In recent years, Beijing's ongoing expansive assertion of rights in air and ocean space in nearby waters has added to the possibility that future collisions and loss of life could precipitate serious conflict. ^[2]

In April 2001, the National Security Archive **published** several documents from 1969-1970 in order to contextualize the EP-3 incident as the latest moment in a long and complex history of U.S. aerial reconnaissance activity over and near Chinese territory, sometimes resulting in mishaps. During the Cold War days of the 1950s and 1960s, the CIA flew U-2 and other aircraft over Chinese territory, with many of the flights piloted by Taiwanese airmen.^[3] Other military agencies, the U.S. Navy and the U.S. Air Force in particular, working in conjunction with the National Security Agency, have operated

aircraft flying near Chinese territory to collect radar and other electronic signals, to intercept communications, and to sweep up aerial debris from nuclear tests. The history of these activities is murky; for example, the CIA has yet to acknowledge fully the Taiwanese role in the U-2 program while the electronic intelligence programs are highly secret involving Sensitive Compartmentalized Information (SCI).[\[4\]](#)