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PUBLIC INTERNATIONAL LAW

Arms Control and Disarmament

BONNIE D. JENKINS AND THEODORE M. HIRSCH*

I. Non-Proliferation Treaty (NPT)¹

The first meeting of the NPT Preparatory Committee was held in New York in April 1997. The meeting followed the 1995 Review Conference, at which the States Parties agreed to extend the NPT indefinitely and to strengthen the Treaty's review process. Specifically, the States Parties at the Conference tasked the Preparatory Committee to consider the "principles and objectives and ways in order to promote the full implementation of the Treaty," with the goal of making recommendations to the 2000 Review Conference. The Preparatory Committee will reconvene in 1998 and 1999 and, if necessary, in the year 2000.

Much of the first Preparatory Committee meeting was taken up with plenary debate on issues of substance related to the Treaty, such as disarmament, nuclear weapon free zones, and peaceful uses of nuclear energy. While the Committee did not adopt recommendations at this session, the Chairman did produce a report containing several points of general agreement. These points included the urgency of achieving universal membership in the NPT; the importance of gaining the earliest possible entry into force of the Comprehensive Nuclear Test Ban Treaty; the need for immediate commencement of negotiations on a treaty banning the production of fissile material, i.e., nuclear material suitable for explosive devices; support for the strengthening of nuclear safeguards; and the expansion of peaceful nuclear cooperation among states. In addition, the Chairman's report includes a compilation of more than one hundred proposed recommendations to the Review Conference submitted by delegations. No attempt was made to eliminate this list's considerable redundancy or to seek general agreement on any of its specific items. The process of distilling from this list a manageable set of consensus recommendations to the 2000 Review Conference will be a major challenge for future Preparatory Committee meetings.

The Chairman read a formal statement to the effect that the next meeting of the Preparatory Committee should allocate time for discussion of three discrete issues: security assurances for par-

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1. Treaty on the Non-Proliferation of Nuclear Weapons, July 1, 1968, U.S.-U.S.S.R., 7 I.L.M. 809.

ties to the NPT, the 1995 Conference Resolution on the Middle East, and a Fissile Material Cutoff Treaty. The inclusion of security assurances on this list reflects a long-standing concern of Treaty parties that are members of the non-aligned movement (NAM), most recently expressed in the "Principles and Objectives" document adopted by the 1995 Review Conference. That document calls, *inter alia*, for further steps "to assure non-nuclear weapon States Parties to the Treaty against the use or threat of use of nuclear weapons." The document goes on to state that "these steps could take the form of an internationally legally binding instrument." At the April Preparatory Committee meeting Myanmar (Burma), on behalf of a small group of NAM states, submitted a proposal to include such an assurance to nonnuclear weapon States Parties as a protocol to the NPT. More significantly, South Africa—a NAM leader—indicated its intention to seek negotiation of such a protocol at the upcoming Preparatory Committee meetings, with the goal of recommending an agreed text to the 2000 Review Conference for its adoption.

The Middle East Resolution referred to by the Chairman is also a product of the 1995 Review Conference. That Resolution called on all states in the region to join the NPT and called for the establishment in the Middle East of a zone free of weapons of mass destruction. Egypt insisted the Resolution be singled out by the Chairman as one of the topics for specific consideration at the next Preparatory Committee meeting. While Egypt may wish to use the Resolution as a means of focusing attention on Israel's nuclear program, it is important to note that the Resolution calls for a zone free of all weapons of mass destruction, not just nuclear. Hence, states suspected of possessing chemical or biological arms could also face scrutiny.

The final special time issue, a Fissile Material Cutoff Treaty (FMCT), was not included at the behest of any one state. Rather, its presence reflects the widespread support for the negotiation of such a treaty, one that would ban production of unsafeguarded, weapon-usable nuclear material. However, attempts to initiate such negotiations at the Conference on Disarmament in Geneva stalled due to a handful of states insisting on linking FMCT negotiations to those on nuclear disarmament.

Handling these three issues—security assurances, the Middle East Resolution, and the FMCT—at the 1998 Preparatory Committee meeting will prove an important test of the NPT's strengthened review process.

II. Strengthening International Safeguards

In May 1997 the Board of Governors of the International Atomic Energy Agency (IAEA) approved an agreement to strengthen safeguards on peaceful nuclear activities. Negotiation of the agreement was prompted, in part, by revelations that Iraq engaged in clandestine nuclear weapons development while subject to IAEA safeguards prior to the Gulf War. The new measures are designed to help the IAEA detect undeclared nuclear activities, as well as to assist it in determining whether declared ones are being used for nuclear explosive purposes.

The agreement, referred to as the Model Protocol, is in the form of a protocol to existing safeguards agreements between the IAEA and individual states. Each non-nuclear-weapon state party to the NPT is required to conclude such a safeguards agreement with the IAEA, covering all nuclear material within its jurisdiction. The purpose of these agreements is to verify that such material is not being diverted for nuclear weapon use. In the case of the United States, a safeguards agreement with the IAEA has been in place since 1980.² Under that agreement,

2. Agreement Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States, *entered into force* Dec. 9, 1980, 16 I.L.M. 22.

known as the Voluntary Offer, the United States undertakes to permit the IAEA to apply safeguards on nuclear material contained in all U.S. nuclear facilities other than those associated "with activities of direct national security significance." The objective of these safeguards is to verify that the United States is not withdrawing significant amounts of nuclear material from a safeguarded facility without first having notified the IAEA.

The Model Protocol strengthens current IAEA safeguards in two fundamental respects. First, it adds to the types of information a state party to a safeguards agreement must declare to the IAEA. For example, the Model Protocol requires such a state to report on locations related to nuclear facilities, but where no nuclear material is present. These locations include manufacturing sites for heavy water or reactor control rods, as well as locations where nuclear research and development activities are taking place. In addition, the Model Protocol commits states to declare the locations of certain nuclear activities, such as uranium mining and some nuclear waste processing, that are excluded from reporting requirements under existing safeguards agreements.

Second, the Model Protocol provides for increased IAEA access rights. The Agency may gain access to any of the locations identified in a state's expanded declaration, as well as to any other location for the purpose of taking environmental samples. At declared locations where nuclear material is customarily present, provision of this access by the inspected state is mandatory. For access to declared locations where nuclear material is not used, or for environmental sampling at undeclared locations, the state may seek to satisfy the Agency through other means if it is unable to provide the requested access. This option is an important exception for the United States, where Fourth Amendment privacy protections could prevent access to some private, non-nuclear locations.

At the end of 1997, seven states had signed protocols to their safeguards agreements, using the Model Protocol as a template. These states are Australia, Armenia, Georgia, Uruguay, the Philippines, Poland, and Lithuania. Many other states appear ready to follow. President Clinton made clear that the United States "stands ready to apply the new measures" contained in the Model Protocol. Negotiation of a protocol to the U.S. Voluntary Offer is expected to begin in early 1998. While it will seek an agreement closely resembling the Model Protocol, the United States will preserve its right to exclude from IAEA access locations and information it regards as directly related to national security.

III. U.S.-China Agreement for Nuclear Cooperation

At the October 1997 summit with Chinese President Jiang Zemin, President Clinton announced he would submit to Congress the certifications and reports necessary to implement the long-pending U.S.-China Agreement for Nuclear Cooperation (the Agreement). Under the Atomic Energy Act³ such a cooperation agreement must be in place before any nuclear material, equipment, or technology may be transferred from the United States to another state. The President's decision to move forward on the Agreement is the product of an intense and high-level nonproliferation dialogue conducted between the two countries in 1997.

The Agreement entered into force in 1985. However, Congress put in place several conditions that must be met before export licenses may be issued for transfers under the Agreement. In 1985 Congress enacted a Joint Resolution⁴ approving the Agreement, but requiring the President to make a series of certifications and a report before the Agreement may be implemented. Among

3. 42 U.S.C. §§ 2011, 2152 (1994).

4. Pub. L. No. 99-183, 99 Stat. 1174 (1985).

these certifications was the requirement to certify that China did not assist any nonnuclear-weapon state in activities having "direct significance for the manufacture or acquisition of nuclear explosive devices" or, if China did, that it made "sufficient progress" in terminating such assistance. In the wake of the crackdown on the Tiananmen Square protestors, Congress added several other conditions to nuclear cooperation with China. Under that law⁵ the President must certify, *inter alia*, that China provided "clear and unequivocal assurances to the United States that it is not assisting and will not assist any nonnuclear-weapon state, either directly or indirectly, in acquiring nuclear explosive devices or the materials and components for such devices."⁶

Successive U.S. Presidents refrained from making these certifications, despite the prospect of lucrative private sector sales to China of nuclear reactors and related equipment. This restraint was due largely to concerns about the nature of China's nuclear cooperation with Pakistan and, to a lesser extent, Iran. While these concerns persisted through the mid-1990s, China did take some significant nonproliferation steps during this period. China became an NPT party in 1992, signed the Chemical Weapons Convention⁷ in 1993, agreed to abide by international controls on missile exports in 1994, supported the NPT's indefinite extension in 1995, and signed the Comprehensive Nuclear Test Ban Treaty⁸ in 1996. While these steps did not constitute the clear and unequivocal assurances required to allow implementation of the Agreement, they did represent a growing willingness by the Chinese to participate in the international nonproliferation regime.

This positive momentum was threatened in 1996, with the reported transfer by Chinese entities of uranium enrichment equipment to Pakistan. As a step toward avoiding U.S. economic sanctions, China pledged not to provide assistance to unsafeguarded nuclear facilities, i.e., facilities not subject to international monitoring for exclusively peaceful use. Pakistan is long suspected of using such facilities to pursue the acquisition of nuclear arms. This pledge, and China's apparent compliance with it to date, was instrumental in President Clinton's decision to make the certifications necessary to implement the Agreement.

In addition to this pledge, the Clinton Administration will rely on three Chinese commitments made in 1997 to make the case to Congress that the Agreement should now be implemented. First, China agreed to terminate existing nuclear cooperation with Iran within a short period of time, and not to engage in any new such cooperation. While it does not appear that existing Chinese cooperation with Iran is of direct significance to the manufacture of nuclear weapons, such cooperation could nonetheless contribute to the basic infrastructure and expertise necessary to develop such weapons. Moreover, Chinese nuclear cooperation with Iran is a matter of considerable concern to key members of Congress reviewing the President's certifications.

Second, China promised to adopt and to implement comprehensive export controls designed to ensure that nuclear material or equipment is not transferred by nongovernmental entities without the approval of appropriate Chinese officials. In addition, China announced it is setting up an export control system to cover dual-use items, i.e., items that may be used for either nuclear or non-nuclear purposes. While regulations to control such items were issued last summer, their implementation is not expected until the middle of 1998. Finally, in October of 1997 China joined

5. Foreign Relations Authorization Act, Fiscal Years 1990 and 1991, Pub. L. No. 101-246, 104 Stat. 15 (1990).

6. 104 Stat. 15, 84.

7. Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, Jan. 13, 1993, 32 I.L.M. 800 [hereinafter CWC].

8. Comprehensive Test Ban Treaty, *opened for signature* Sept. 24, 1996, 35 I.L.M. 1439.

the Zangger Committee, a voluntary organization that coordinates export controls among NPT states supplying nuclear material and equipment to other parties for peaceful purposes.

The Presidential certifications and reports necessary to implement the Agreement are expected to be submitted to Congress in early 1998. Once they are submitted, no nuclear cooperation under the Agreement may occur until a period of thirty days in which Congress is in session elapses. During this period, the debate over the Agreement and, more broadly, the Administration's policy toward China, is likely to be highly charged. Many in Congress favor using the stick of economic sanctions, rather than the carrot of nuclear cooperation, as a means of stemming Chinese nuclear and missile proliferation. The outcome of this debate should serve as a good barometer of whether the Administration and Congress will be able to work cooperatively on the proliferation challenges that lie ahead.

IV. Nuclear Weapon Free Zones

In June 1997 consultations on the Southeast Asia Nuclear Weapon Free Zone (SEANWFZ) Treaty⁹ were held between the five declared nuclear weapon states (China, France, Russia, the United Kingdom, and the United States) and a working group of the Association of Southeast Asian Nations (ASEAN). The Treaty, which was signed by each of the eligible states in the region, entered into force on March 27, 1997. Its Protocol, which is open to the nuclear weapon states for signature, has yet to be signed by any of them. The June meetings were an attempt to overcome obstacles to obtaining the needed signatures.

Discussions between the U.S. delegation and the ASEAN working group focussed primarily on the scope of the negative security assurance (NSA) in article 2 of the SEANWFZ Protocol. That provision obligates Protocol Parties not to use or threaten to use nuclear weapons either against any State Party to the Treaty or anywhere within the Zone. The first of these commitments, i.e., not to use nuclear weapons against a Treaty Party or threaten to do so, is present in a protocol to each of the existing nuclear weapon free zone (NWFZ) treaties. It was provided to States Parties in return for their taking on legally-binding obligations not to acquire nuclear weapons or to permit other states to station such weapons in their territory. The United States is prepared to provide such an assurance to SEANWFZ Treaty Parties.

The second commitment set forth in article 2 of the Protocol, i.e., not to use or threaten to use nuclear weapons anywhere within the Zone, represents a departure from other NWFZ treaties. By undertaking this commitment, a Protocol Party is prohibited from threatening or using nuclear weapons against *any* state in the region, regardless of whether it was a party to the SEANWFZ Treaty. Moreover, since the Zone includes areas extending more than 200 miles off the coast of Treaty Parties, the Protocol's NSA also covers significant areas of the high seas. The Zone could therefore serve as a refuge from nuclear attack for vessels of extra-regional states, including ships or submarines bearing nuclear arms. The delegation that traveled to Malaysia in June made clear that the United States could not accede to a protocol containing an NSA of such unprecedented dimensions.

At the time of this writing, there are indications that ASEAN may offer to drop the second commitment in article 2 of the Protocol so that only Treaty Parties will benefit from its NSA. This change would be a most welcome development to the United States, resolving what it long emphasized as a major problem in the Protocol's text. This change would not, however,

9. Treaty on the Southeast Asia Nuclear Weapon-Free Zone, Dec. 15, 1995, 35 I.L.M. 635.

necessarily lead to U.S. signature. Other longstanding concerns, such as the use in the Treaty of the terms "exclusive economic zones" and "continental shelves," remain to be addressed. These terms are generally reserved for agreements addressing economic and resource issues in marine areas, and are not considered appropriate for security arrangements. Further consultations between the United States and ASEAN to address outstanding issues are likely in early 1998.

Regarding other regional NWFZs, a conference was held in Uzbekistan in September 1997 to discuss the possibility of establishing a NWFZ in Central Asia. A draft of such a treaty has yet to be produced. Neither the South Pacific Protocol¹⁰ nor the African Protocol,¹¹ both of which the United States signed in 1996, has been submitted to the Senate for its advice and consent to ratification.

V. Anti-Ballistic Missile Treaty¹²

The Anti-Ballistic Missile (ABM) Treaty was signed in 1972 between the United States and the Soviet Union, and entered into force October 3, 1972. The Treaty prohibits deployment of a nationwide defense against strategic ballistic missile attack. The Treaty provides that each State Party has a limit of two ABM deployment areas to protect its capital or to protect an Inter-Continental Ballistic Missile (ICBM) launch site. In 1974, however, the two Parties agreed to reduce the number of Treaty-permitted ABM deployment areas to one for each State. The United States maintains its ABM site near Grand Forks, North Dakota (this system has been inactive since 1976), and Russia maintains its ABM site near Moscow. The ABM Treaty also provides for the establishment of a Standing Consultative Commission (SCC), made up of Representatives of each Party, to promote the objectives and purposes of the Treaty.

On September 26, 1997, the U.S. Secretary of State and the Foreign Ministers of the Russian Federation, the Republic of Belarus, the Republic of Kazakhstan, and Ukraine signed the Memorandum of Understanding on Succession to the ABM Treaty and other documents related to the ABM Treaty: The First Agreed Statement; the Second Agreed Statement; a Confidence-Building Measures Agreement; and the Regulations of the Standing Consultative Commission.¹³ The first two documents clarify the distinction between anti-ballistic missile systems, which are limited by the Treaty, and theater ballistic missile defense (TMD) systems,¹⁴ which are not limited by the Treaty.

A. FIRST AGREED STATEMENT OF SEPTEMBER 26, 1997, RELATING TO THE ABM TREATY

Article VI(a) of the ABM Treaty prohibits each State Party from giving non-ABM systems or their components the capabilities to counter strategic ballistic missiles or their elements in flight trajectory and prohibits testing such systems and their components in an ABM mode. TMD systems satisfying the parameters of the First Agreed Statement and the Second Agreed Statement are deemed consistent with the Article VI(a) obligations.

10. South Pacific Nuclear Free Zone Treaty, Aug. 6, 1985, 24 I.L.M. 1440.

11. African Nuclear-Weapon-Free Zone Treaty, June 21-23, 1995, 35 I.L.M. 698.

12. Treaty on the Limitation of Anti-Ballistic Missile Systems, May 26, 1972, U.S.-U.S.S.R., 23 U.S.T. 3435, 11 I.L.M. 784.

13. U.S. ARMS CONTROL AND DISARMAMENT AGENCY, ABM TREATY AGREEMENTS: TEXTS (1997).

14. TMDs can be broken down into three categories: lower-tier systems, theater-wide defense systems, and boost-phase defenses. Lower-tier systems are designed to intercept missiles within the atmosphere and to protect small areas, theater-wide defense systems protect large areas and intercept above the atmosphere, and boost-phase systems intercept missiles in their boost-phase, before submunitions can be deployed. See COALITION TO REDUCE NUCLEAR DANGERS, THE WEAKEST LINE OF DEFENSE: INTERCEPTING BALLISTIC MISSILES 46-48 (1996).

The First Agreed Statement provides that lower-velocity TMD systems are systems with interceptor missiles whose maximum demonstrated velocities do not exceed, or have not exceeded, 3.0 kilometers/second. Land-based, sea-based, and air-based TMD systems and their interceptor missiles, interceptor missile launchers and radars are deemed compliant with the ABM Treaty if during the testing of such TMD components or systems, the ballistic target-missile during the flight-test does not exceed either a velocity of 5.0 kilometers/second or a range of 3500 kilometers, provided such systems are not tested in a manner that would constitute "tested in an ABM mode." The United States confirmed that the core U.S. lower-velocity TMD programs (Patriot PAC-3, THAAD (Theater High-Altitude Area Defense), and U.S. Navy Theater-Wide Theater Ballistic Missile Defense), as currently configured or designed, are fully compliant with the ABM Treaty and within the scope of the First Agreement.

B. SECOND AGREED STATEMENT OF SEPTEMBER 26, 1997, RELATING TO THE ABM TREATY

According to this Second Agreed Statement, higher-velocity TMD systems are those that have interceptor missiles with velocities that exceed 3.0 kilometers/second. Pursuant to the Second Agreed Statement, the Parties undertake to conduct the testing of interceptor missiles, interceptor missile launchers, and radars of the higher-velocity TMD Systems, separately as in a system, in such a manner that the velocity of the ballistic target-missile will not exceed 5.0 kilometers/second over any part of its flight trajectory and the range of the ballistic target missile will not exceed 3,500 kilometers.

The Parties also agreed not to develop, test, or deploy space-based TMD interceptor missiles and space-based components based on other physical principles, such as lasers capable of substituting for space-based TMD interceptor missiles. Research on such systems is permitted. The development, testing, and deployment of air-based, sea-based, and land-based TMD or other non-ABM systems based on other physical principles is not considered or prohibited by either this Agreement or the First Agreement. Lastly, the Parties must implement the provisions of the Confidence-Building Measures Agreement regarding those higher velocity TMD systems that are covered by the Second Agreed Statement but not subject to the Confidence-Building Measures Agreement on the date of its entry into force.

Both Agreed Statements will enter into force simultaneously with the Memorandum of Understanding (MOU) on Succession. They are subject to ratification or approval procedures of the government of each State (the United States, Russia, Kazakhstan, Belarus, and Ukraine).

C. MEMORANDUM OF UNDERSTANDING ON SUCCESSION

When the USSR dissolved at the end of 1991, it became necessary to reach agreement as to which of the former Soviet states would collectively assume its rights and obligations under the ABM Treaty, which continued in force under its own terms. The MOU recognizes the Republic of Belarus, the Republic of Kazakhstan, the Russian Federation and Ukraine as the successor states of the Soviet Union for the purpose of the ABM Treaty, collectively assuming the rights and obligations of the former Soviet Union under the Treaty. Accordingly, pursuant to the MOU, these four successor states, along with the United States, constitute the parties to the ABM Treaty.

The MOU does not constitute a substantive modification of rights and obligations under the Treaty; rather, it works to preserve the original object and purpose of the Treaty. For example, the MOU restricts the four successor states to only those rights held by the former Soviet Union by limiting them collectively to no more than 100 interceptors on 100 launchers at a single ABM deployment area and no more than fifteen ABM launchers at an ABM test

range. Furthermore, it precludes the transfer of ABM systems and components to states that are not a Party to the Treaty and ensures, through its definition of "capital," that the only capital-centered ABM system deployment area permitted for the USSR successor states is the Moscow ABM system deployment area.

The MOU will enter into force upon the deposit of instruments of ratification by the five signatory states and will remain in force as long as the ABM Treaty, which is of unlimited duration, remains in force.

D. REGULATIONS OF THE STANDING CONSULTATIVE COMMISSION

The ABM Treaty provides for the establishment of the Standing Consultative Commission (SCC). The SCC is charged with addressing implementation matters relating to the ABM Treaty and considering proposals to promote the Treaty's objective and viability. The succession to the rights and obligations of the USSR in connection with the ABM Treaty of Belarus, Kazakhstan, the Russian Federation, and the Ukraine necessitated a revision of the regulations of the SCC to reflect the new multilateral situation. The revised Regulations serve solely to update the original Regulations of the SCC to provide for the equal participation of the four successor states of the USSR for the purposes of the Treaty. The revised Regulations will enter into force when the MOU on Succession enters into force.

E. AGREEMENT ON CONFIDENCE-BUILDING MEASURES

The Parties agreed to a Confidence-Building Measures Agreement (CBMA) to promote reciprocal openness, trust, and to preserve strategic stability. The TMD systems subject to the provisions of the CBMA are: for the United States, the THAAD system and the Navy Theater-Wide Theater Ballistic Missile Defense Program; for Belarus, the Russian Federation and Ukraine, the SA-12 system. Kazakhstan does not currently possess the SA-12 system. The CBMA provides that the systems may become subject to its provisions in the future by agreement of the Parties; however, all future higher-velocity systems will automatically become subject to the CBMA by operation of the Second Agreed Statement.

The CBMA contains a number of confidence-building measures, including notifications of test ranges where launches of interceptor missiles of systems subject to the CBMA will take place; notifications of launches of each interceptor missile of a subject system, if a ballistic target missile is used during the launch; an assessment of TMD programs confronting the Party; information on each of the Party's systems subject to the CBMA; and, information on the components of each of a Party's systems subject to the CBMA. Much of this information is to be updated annually.

The CBMA enters into force simultaneously with the entry into force of the First and Second Agreed Statements and shall remain in force as long as either of those Agreed Statements remains in force.

VI. Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Reduction and Limitation of Strategic Offensive Arms (the START Treaty)¹⁵

The START Treaty, which was signed by the United States and the Soviet Union on July 31, 1991, and entered into force on December 5, 1994, was the first Treaty to reduce

15. See TREATY WITH THE UNION OF SOVIET SOCIALIST REPUBLICS ON THE REDUCTION AND LIMITATION OF STRATEGIC OFFENSIVE ARMS (THE START TREATY), S. TREATY DOC. NO. 102-20 (1991).

strategic offensive arms. Pursuant to the Lisbon Protocol, Belarus, Kazakhstan, Russia, and Ukraine replaced the former Soviet Union as parties to the treaty, and in separate agreements, Belarus, Kazakhstan, and Ukraine agreed to eliminate all of their strategic offensive arms. Upon full implementation of the Treaty, the overall strategic nuclear forces of the United States and Russia will be reduced by 30-40 percent. The Treaty provides for an extensive verification regime to assist the States Parties in compliance with the provisions of the Treaty.

The Treaty Between the United States of America and the Russian Federation on Further Reductions and Limitations of Strategic Offensive Arms (START II)¹⁶ was signed on January 3, 1993, by the two States. The Treaty, which has yet to enter into force, received advice and consent to ratification from the U.S. Senate on January 26, 1996. The Treaty has yet to receive approval from the Russian Duma. Originally, the date when START II limitations and reductions were to be completed was January 1, 2003, and interim limitations and reductions of START II were to be carried out by December 5, 2001.

On September 26, 1997, the U.S. Secretary of State and the Foreign Minister of the Russian Federation signed a Protocol to the START II Treaty.¹⁷ This Protocol extends to December 31, 2007, the time period for implementation of START II, when all Treaty mandated reductions are to be completed. The Russian Federation was concerned that the costs of dismantling nuclear weapons systems would be too high, and the Protocol is meant to relieve some of those concerns. The Protocol also extends to December 31, 2004, the date when interim limitations and reductions under START II must be completed. In addition, the Parties agreed they may conclude an agreement on a program of assistance for the purposes of facilitating and accelerating implementation of the START II reductions and limitations.

The two States also signed and exchanged legally binding letters agreeing to deactivate by December 31, 2003, all strategic nuclear delivery vehicles that will be eliminated under START II by December 31, 2007. The letters enter into force when START II enters into force.

In a Joint Agreed Statement, the two States agreed that the Minuteman III ICBM downloading under START II may be carried out at any time before December 31, 2007, which will ensure that implementation under START II will take place in a stable and equivalent manner. The Protocol is subject to ratification or approval by the signatory States in accordance with the constitutional procedures of each State.

VII. Chemical Weapons Convention¹⁸

The Chemical Weapons Convention (CWC) was submitted to the Senate Foreign Relations Committee for its advice and consent to ratification on November 23, 1993. The CWC was opened for signature on January 13, 1993, at which time it was signed by Secretary of State Eagleburger and 129 representatives from other countries.

On April 24, 1997, the U.S. Senate gave its advice and consent to ratification of the CWC, attaching twenty-eight conditions. The President ratified the CWC on April 25, 1997, and it entered into force on April 29, 1997. As of December 1997, there were 105 States Parties to the Treaty.

16. Treaty Between the United States of America and the Russian Federation on Further Reductions and Limitations of Strategic Offensive Arms (START II), S. REP. NO. 104-10 (1995).

17. START II Protocol, U.S. Arms Control and Disarmament Texts (1997).

18. CWC, *supra* note 7, 32 I.L.M. 800.

The CWC obligates each State Party to destroy all chemical weapons it owns or possesses (or are located in any place under its jurisdiction or control), to destroy all chemical weapons it abandoned on the territory of another State Party, to destroy all chemical weapons production facilities it owns or possesses (or are located in any place under its jurisdiction or control), and to not use riot control agents as a method of warfare. States Parties also cannot develop, produce, otherwise acquire, stockpile, or retain chemical weapons; engage in any military preparation to use chemical weapons; or assist, encourage, or induce anyone to engage in any activity prohibited to a State Party under the Convention.¹⁹

19. *Id.* at 804.