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# PUBLIC INTERNATIONAL LAW

## Arms Control and Disarmament

THEODORE M. HIRSCH AND BONNIE D. JENKINS\*

### I. Nuclear Tests in South Asia

On May 11 and 13, the newly elected Indian government carried out five underground nuclear tests, the first conducted other than by a Nuclear Non-Proliferation Treaty (NPT) "nuclear weapon state" (NWS) since 1974.<sup>1</sup> Despite intense lobbying by the United States and others, Pakistan followed suit later that month, with six such detonations of its own. While the technical success of the tests remains questionable, the damage they inflicted on South Asian security is beyond doubt. Moreover, the tests represent a serious challenge to the global nuclear nonproliferation regime.

The tests were met with wide international condemnation. In a communique issued in June, the five permanent members of the U.N. Security Council (China, France, Russia, the United Kingdom, and the United States, also known as the P-5) set out a series of steps that India and Pakistan must take before relations with them could be fully restored. These "benchmarks," which include non-deployment of nuclear weapons or nuclear-capable missiles, unconditional adherence to the NPT, and resumption of a confidence-building dialogue between the two rivals, were reiterated in a communique by the Group of Eight industrialized nations and in U.N. Security Council Resolution 1172. While these documents set the basic parameters for future discussions with New Delhi and Islamabad, they were by no means the only international statements deploring the tests. Criticism was also expressed, *inter alia*, by such diverse groups

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1. Under the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), states that have exploded a nuclear device prior to January 1, 1967, are recognized as "nuclear-weapon states," and are subject to a different set of obligations. There are five of these states: China, France, the Soviet Union (Russia), the United Kingdom, and the United States. Treaty on the Non-Proliferation of Nuclear Weapons, *opened for signature* July 1, 1968, 21 U.S.T. 483, 487, 729 U.N.T.S. 161, 171.

as the Organization of American States,<sup>2</sup> the Gulf Cooperation Council,<sup>3</sup> and the Association of South East Asian Nations.<sup>4</sup>

The United States reacted unilaterally to the tests on two fronts. First, the president announced that he was implementing the so-called Glenn Amendment, which requires a broad range of sanctions be imposed on any state, other than a NWS, that detonates a nuclear explosive device. These sanctions include: a ban on U.S. military sales; a bar to exporting military equipment and most dual-use items (i.e., items with both military and non-military applications); termination of U.S. foreign assistance to the government of the testing state; and opposition to financing by international financial institutions such as the World Bank. In addition, the Administration exercised its discretionary power to impose further sanctions, including suspension of joint military exercises and limitations on contacts between high-level U.S. officials and those of India and Pakistan. The United States has sought international support for its sanctions through strong and sustained diplomacy.

Second, the United States initiated parallel dialogues with Indian and Pakistani officials. Seven rounds of these talks were held in 1998, with the U.S. delegation led by Deputy Secretary of State Strobe Talbott. The discussions are intended to make progress on the P-5 and G-8 benchmarks, including Indian and Pakistani accession to the NPT as "non-nuclear weapon states." From the outset of the talks in June, however, it has been clear neither state had any intention of relinquishing its nuclear arms in the near future. While NPT accession remains a long-term goal, the talks have focused on the more pressing need to defuse dangerous tensions in South Asia and to ensure that the tit-for-tat nuclear tests do not escalate into an arms race. Accordingly, the Talbott team agreed to focus on a set of five benchmarks attainable in the near to medium term. These are:

- (1) adherence to the Comprehensive Test Ban Treaty (CTBT);<sup>5</sup>
- (2) participation in negotiating a Fissile Material Cutoff Treaty (FMCT), along with adoption of a fissile material production moratorium pending the FMCT's entry into force;
- (3) enactment and enforcement of stronger export controls;
- (4) resumption of a dialogue with one another, focusing on confidence-building measures that increase stability; and
- (5) restraint in development, production, and deployment of nuclear arms and nuclear-capable missiles and aircraft.

Progress has been made on several of these fronts. At the opening of the U.N. General Assembly's 50th anniversary session in September, statements were delivered by the Prime Ministers of both India and Pakistan committing, albeit conditionally, to sign the CTBT no later than September 1999. Both countries have also withdrawn their opposition to FMCT negotiations, allowing an Ad Hoc Committee to be established for this purpose at the Conference on Disarmament in Geneva. It remains to be seen whether both India and Pakistan will positively participate in the negotiations, or whether they will stall the talks by raising procedural objections. Each has also engaged with U.S. experts on how best to strengthen its export controls, and the suspended dialogue between the governments of India and Pakistan has resumed.

2. *Indian/Pakistan Nuclear Testing* OAS General Assembly Resolution, OAS Doc. A.G./Res. 1600 (XXVIII-Q/98) (June 3, 1998), available at <<http://www.oas.org/En/prog/juridica/english/ga-res98/Eres1600.htm>>.

3. Statement of GCC Foreign Ministers, June 28, 1998.

4. Statement of Ass'n of S.E. Asian Nations (ASEAN) Regional Forum, July 27, 1998, as reported in Maria Teresa Villanueva-Cerjano, *ARF Statement Compromises on Nuclear Tests*, JAPAN ECON. NEWSWIRE, July 27, 1998.

5. Comprehensive Test Ban Treaty, opened for signature Sept. 24, 1996, 35 I.L.M. 1439 (1996).

In recognition of this progress, the administration sought and received authority to waive some of the Glenn Amendment sanctions. This authority, sponsored by Senator Brownback and enacted in October, permits the president to waive for one year most of the statutory economic sanctions in place. In early December, the president chose to exercise this authority to free up several U.S. trade-related programs, including the assistance provided by the Overseas Private Investment Corporation (OPIC) and the Export-Import Bank, as well as personnel exchanges under the International Military and Education Training program (IMET). In addition, a waiver was invoked to permit U.S. support for an IMF lending package deemed necessary to rescue Pakistan's collapsing economy. Provisions of the Glenn Amendment that prohibit U.S. military sales and financing, as well as restrictions on exports to South Asia, are not subject to the Brownback waiver authority.

As 1998 drew to a close, the signals from South Asia were mixed. While some progress on the "benchmarks" had been achieved, or at least committed to, there was no indication that either India or Pakistan is prepared to step back from the nuclear precipice. Efforts to obtain a moratorium on production of fissile material, or to gain agreement to the non-deployment of nuclear weapons and missiles, have largely been dismissed. Progress has generally come on benchmarks like CTBT signature and FMCT negotiation which, while no doubt significant, do not constrain near term nuclear advances by either state. Against this backdrop, a presidential trip to the region, long scheduled for November, was deferred. As Deputy Secretary Talbot continues his dialogue with his interlocutors in India and Pakistan, and as those two states resume discussions with one another, there is hope that the president's visit may take place in 1999.

## II. NPT—Second Preparatory Committee Meeting

The second Preparatory Committee (PrepCom) meeting of the parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) was held in Geneva from April 27 to May 5. The NPT is the preeminent international legal instrument of nonproliferation, with a membership that includes every nation in the world save four: India, Pakistan, Israel, and Cuba. A Review Conference (RevCon) of the parties is convened every five years, with the PrepCom meeting in each of the preceding years as needed. At the 1995 RevCon, participating states decided to extend indefinitely the NPT's duration and to "strengthen" its review process, tasking the PrepCom with recommending to the next RevCon ways to "promote the full implementation of the Treaty."<sup>6</sup>

The initial meeting of the PrepCom, held in April 1997, was generally harmonious, although the parties were unable to agree on recommendations. Instead, the chairman issued a working paper containing a list of agreed points, along with a compendium of more than 100 unagreed recommendations proposed by delegations. In addition, the chairman declared that time would be allocated at the committee's next meeting to discuss three potentially divisive issues: security assurances for NPT non-nuclear-weapon states (NNWS), the 1995 Resolution on the Middle East,<sup>7</sup> and a Fissile Material Cutoff Treaty (FMCT).

6. 1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons: Final Document, May 11, 1995, 34 I.L.M. 961, 968 (1995).

7. While the Resolution on the Middle East does not mention Israel by name, it "notes with concern the continued existence in the Middle East of unsafeguarded nuclear facilities," and "calls upon all states in the Middle East that have not yet done so, without exception, to accede to the Treaty." *Id.* at 974.

At PrepCom II, focused discussion of these three "special time" issues proved less contentious than expected. While South Africa made good on its promise to table elements of a global "security assurance" treaty, one that would legally commit the five NPT nuclear weapon states (China, France, Russia, the United Kingdom, and the United States) not to use or threaten to use nuclear weapons against the NNWS, it did not press for action on its proposal. Similarly, debate on the Middle East Resolution was less conflictual than expected, largely because Canada suggested reflecting parties' views in a stand alone committee document, one proclaiming the PrepCom's views on current issues. Regarding the third issue, all agreed to support early negotiation of an FMCT.

As the PrepCom began its second week, the chairman convened a Working Group to focus on recommendations to the 2000 RevCon. The group made slow but steady progress, ultimately "graduating" fifteen of the PrepCom I unagreed proposals onto the agreed list. On the committee's last day, however, the South African delegate violently objected, challenging whether these proposals were in fact "agreed." In the end, he accepted that they were "generally agreed," but the damage to the committee's fragile consensus had been done. This became clear when the PrepCom returned to plenary session to finalize its report. Tensions over the Middle East Resolution, which had temporarily been submerged by the Canadian proposal, now rose to the surface. As Egypt, Iran, and other Middle Eastern states sought to condemn Israel in the report, the United States was forced to play the spoiler. In the end, the PrepCom Report was reduced largely to a factual statement that the committee had met and had set the date and venue for its next session.

The second PrepCom meeting ended with the NPT "strengthened review process" in disarray. The nuclear tests in South Asia, which followed on the heels of the PrepCom, reinforced a sense of pessimism regarding global nonproliferation efforts. It is possible, however, that the tests may inject a sense of urgency into the next PrepCom meeting, prompting parties to place the strength of the NPT above parochial concerns. Even in the best of circumstances, however, PrepCom III will face a daunting task in reaching agreement on a set of recommendations to the fast approaching 2000 RevCon.

### III. Iraq

The cat and mouse game between Saddam Hussein and international weapons inspectors continued through much of 1998. The personal intervention of U.N. Secretary General Kofi Annan in February to avert military action was backed up by Security Council Resolution 1154, which warned of the "severest consequences" if Iraq failed to cooperate with international inspectors.<sup>8</sup> In August, Hussein suspended such cooperation except for limited monitoring, and in October barred all further activity in Iraq by the U.N. Special Commission (UNSCOM). These orders were rescinded the next month in the face of imminent U.S. and U.K. airstrikes, followed by a Security Council press statement warning that cooperation with inspectors must be "unconditional and sustained." In the month following, Iraq refused inspectors' document requests, limited inspection times and, in some cases, refused site visits.

On December 14, Chairman Butler reported to Annan that UNSCOM was "not able to conduct the substantive disarmament work mandated to it by the Security Council." Two days later, the United States and United Kingdom commenced Operation Desert Fox, a massive air bombard-

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8. S.C. Res. 1154, U.N. SCOR, 53d Sess., 3858th mtg., U.N. Doc. S/RES/1154 (1998).

ment designed to degrade Iraq's weapons of mass destruction program and its ability to threaten its neighbors. While the campaign appears to have set back Baghdad's WMD program, the prognosis for further disarmament in Iraq is uncertain. While the United States continues to support a robust UNSCOM/IAEA inspection regime, it has also increased its engagement with Iraqi opposition groups in hopes of dislodging the government of Saddam Hussein.

#### IV. The Treaty Between the United States of America and the Russian Federation on Further Reduction and Limitation of Strategic Offensive Arms (START II)

It has been an eventual, though disappointing year for START II and related issues. The United States ratified the START II Treaty, signed by Russian President Boris Yeltsin and former President George Bush, in 1996. However, it was not ratified by Russia in 1998 and, as a result, the treaty is still not in force.

The START II Treaty, once it enters into force, will reduce the U.S. and Russian arsenal of strategic nuclear warheads to between 3,000 and 3,500. It will eliminate the most destabilizing strategic weapons: heavy intercontinental ballistic missiles (ICBMs) and all other multiple-warhead ICBMs. It will reduce the total number of strategic nuclear weapons deployed by both countries. This treaty builds upon the START Treaty, which was signed by the United States and the Soviet Union in 1991, and which entered into force on December 5, 1994; however, START II will have greater reductions in strategic nuclear forces.<sup>9</sup>

##### A. EVENTS IN 1998

In the beginning of the year, the leader of the Russian Communist party and its parliamentary faction, Gennadiy Zyuganov, said it would be premature for the Russian State Duma to ratify START II given the deterioration of the situation in Iraq.<sup>10</sup> In May, Zyuganov once again made public his opposition of the treaty. This time, he stated that the treaty was signed at a time when there was nuclear parity between the United States and Russia. In his view, such parity no longer existed, and parity could not now be possible.<sup>11</sup> It was asserted that under such circumstances, START II should not be ratified by the Duma.

On April 13, 1998, Russian President Boris Yeltsin announced that he would submit to the Duma the protocols of START II,<sup>12</sup> which would extend the deadline for implementing START II from 2003 to 2007.<sup>13</sup> These Protocols were signed in 1997 by Secretary of State Madeleine Albright and Russian Foreign Minister Yevgeny Primakov in an attempt to satisfy concerns by both parties regarding the treaty.<sup>14</sup>

Others in Russia were more positive about the ratification of START II. As a case in point, in May 1998, the Russian Strategic Missile Troop Commander, Colonel-General Vladimir Yakovlev, stated that there is no alternative to the ratification of START II, as some of the

9. ACDA Fact Sheet, *Treaty Between the United States of America and the Russian Federation on Further Reduction and Limitation of Strategic Offensive Arms* (current as of May 21, 1996) <<http://www.acda.gov/factsheet/wmd/nuclear/start2/start-95.htm>>.

10. *Russian Communist Leader: 'Premature' To Ratify START II*, FBIS Wire, Feb. 4, 1998 [hereinafter '*Premature' To Ratify START II*].

11. *Russian Communist Leader Against START II Ratification*, FBIS Daily Report SOV, May 18, 1998 [hereinafter '*Against START II Ratification*'].

12. *US Welcomes Russian Move Towards Ratification of START II*, AGENCE FR. PRESSE, Apr. 13, 1998, available in LEXIS, NEWS Library, CURNWS File.

13. Bonnie D. Jenkins & Theodore M. Hirsch, *Arms Control and Disarmament*, 32 INT'L LAW. 427 (1998).

14. *Id.*

heavy missiles in the Russian inventory would be out of their maximum lifetimes and would need to be decommissioned by 2007.<sup>15</sup> He noted it was unlikely that Russian politicians would call for the reproduction of heavy missiles, particularly in light of the fact that such a project would require about 35 billion redenominated roubles from over five to seven years. In addition, on May 24, the Russian Foreign Ministry noted that START II is crucial in terms of Russian security, as Russia cannot afford to maintain such a large quantity of missiles; in fact, a START III is also needed for that reason.<sup>16</sup> In October, First Deputy Prime Minister Yury Maslukov stated that if Russia does not ratify the treaty, it would have lost its voice in the control of weapons of mass destruction.

Despite a speech by President Yeltsin on May 12 in which he expressed his hope that START II would be endorsed by the Duma, it became clear later that week, on May 14, that the Russian Duma would not approve START II. The Chairman of the Duma, Gennady Seleznev, stated that because of a shortage of funds, it had no right to endorse the treaty. In this respect, financial problems were cited as the sticking point—funds that would be needed for the destruction of the weapons, and such funds were not at that time in the state budget.<sup>17</sup>

Steps for the ratification of the treaty continued by other sectors of the Russian government. The Russian Foreign Ministry called on the State Duma to ratify the treaty prior to the July summit meeting between President Yeltsin and President Clinton.<sup>18</sup> President Yeltsin, on May 23, urged the Duma to work on START II and not suspend preparation for the ratification of the treaty.<sup>19</sup> However, in the summer, the Duma decided to postpone the ratification debate until the fall of 1998.

In October, Russian Duma Chairman Sergey Baburin stated that NATO air strikes against the Federal Republic of Yugoslavia would endanger prospects for ratification of START II.<sup>20</sup> However, in November, progress was made towards ratification as committees in the Duma began preparing documents to ratify the treaty. Nevertheless, in December, the Duma decided to postpone consideration of START II until mid-1999. The reason given for the postponement was the U.S. and British air strikes on Iraq in December.

Meanwhile, in the United States in November, the Pentagon recommended to President Clinton that the United States consider a reduction in its nuclear arsenal. This request is the result of budget constraints and fewer security threats, and the belief that such reductions would not affect U.S. ability to deter a nuclear adversary. Such a reduction in U.S. nuclear forces would result in an arsenal below the 6,000 allowed under the START Treaty.<sup>21</sup> Both the Navy and Air Force recognize the negative prospects of paying billions of dollars to rebuild nuclear weapons the United States has agreed to get rid of under START II.

On a more positive note for the treaty, in September, Yeltsin and Clinton signed an agreement to further nuclear arms reduction. The document provides that the two states will cooperate

15. *Russian Strategic Commander Says No Alternative to START II*, FBIS Topical Reports Arms Control and Proliferation Issues, May 12, 1998 [hereinafter *No Alternative to START II*].

16. *Foreign Ministry Says Russia Needs START II More than U.S.*, FBIS Daily Report SOV, May 22, 1998 [hereinafter *Russian Needs START II More*].

17. *Russian Lower House Not to Approve START*, XINHUA NEWS AGENCY, May 14, 1998, available in LEXIS, NEWS Library, XINHUA File.

18. *State Duma Called Upon to Ratify START II by July*, XINHUA NEWS AGENCY, May 19, 1998, available in LEXIS, NEWS Library, XINHUA File.

19. *Selenev—Yeltsin Urges Duma to Work on START II*, FBIS Daily Report SOV, May 21, 1998.

20. *Air Strikes Will Endanger START II*, FBIS Topical Reports Arms Control and Proliferation, Oct. 14, 1998.

21. *Pentagon Wants U.S. Nuclear Arsenal Reduced, NY Times Says*, BLOOMBERG NEWS, Nov. 23, 1998.

to accelerate the entry into force of START II, and that upon the ratification of START II by Russia, both sides will immediately begin negotiations on START III. Such a START III would further reduce the levels of strategic nuclear weapons of the parties of both sides to between 2,000 and 2,500. In addition, in February, Russian military experts inspected a U.S. base of intercontinental ballistic missiles in Missouri, pursuant to the START I Treaty. The purpose of the inspection was to determine whether the base's ballistic missiles and launchers were in line with information the United States submitted to the Russian Federation in accordance with obligations set forth in the START I Treaty. The United States demolished silo launchers and inspections were carried out to ensure such launchers were destroyed. Immediately prior to this visit, Russian inspectors visited a base of missile-carrying submarines located in Georgia. In March, Russian experts traveled to California for an inspection of a storage of ballistic missiles from nuclear-propelled submarines. In June, U.S. inspectors traveled to Russia to inspect a Russian ballistic missile base in the Saratov region under the START I regime. The inspectors were checking the accuracy of Russian reporting of their numbers of heavy ballistic missiles deployed at the base, and again in June, Russian experts traveled to the United States to examine strategic military sites in accordance with START I.

There is no possibility of a START III until START II has been ratified by the Russian Duma. This point was made clear by the Russian Foreign Ministry in May 1998, when the Russian Foreign Ministry Spokesman stated that "... it is impossible to discuss parameters of a START III without ratification of START II."<sup>22</sup> U.S. Secretary of State Albright made a similar statement on June 10 when she stated that the United States and Russia cannot move towards START III until START II is ratified.

#### V. Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Elimination of Their Intermediate-Range and Shorter-Range Missiles (INF)

The INF Treaty, signed by the United States and the Soviet Union on December 8, 1987, entered into force on June 1, 1988. This treaty restricts all U.S. and Soviet intermediate-range (1,000–5,500km) and shorter-range (500–1,000km) ground-launched nuclear missiles and their support equipment to specified and support facilities and deployment areas. It also prohibits the further production of all such treaty-limited items (TLI).

Since entry into force of the treaty, 2,700 medium- and shorter-range missiles covered by the treaty have been destroyed. All missiles of the parties within these categories have been scrapped. Facilities where this activity took place have been under inspection since entry into force, and continue to be under inspection. The treaty established a Special Verification Committee (SVC) of the States Parties as a forum to discuss implementation issues and matters to enhance its viability and effectiveness. As a result of the collapse of the Soviet Union in 1992, the Treaty is now implemented by five states: the United States, Russia, Belarus, Ukraine, and Kazakhstan.

##### A. EVENTS IN 1998

On November 9, 1998, in Geneva, the United States, Belarus, Kazakhstan, Russia, and Ukraine representatives signed seven agreements during the twenty-first session of the SVC. These agreements are to ensure the continued implementation and adherence to the treaty's

22. Spokesman: *Russo-US Summit to Advance Nuclear Disarmament*, FBIS Wire, May 19, 1998.



provisions for many years to come. The amendments are basically administrative in nature, and relate to operating procedures and administration for inspections. One such amendment coordinates INF and START inspection procedures at a continuous monitoring inspection site located at the Votkinsk Machine Building Plant (missile production facility) in Russia. Another amendment revised the procedures of the SVC to provide for the participation of Belarus, Kazakhstan, Russia, and Ukraine in the SVC following the dissolution of the Soviet Union.

The INF continues to be in force and the amendments signed in November recognizes the will of the parties implementing the treaty to continue its implementation.

## VI. Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (BWC)

The BWC bans the development, stockpiling, or acquisition of biological agents or toxins that are of a type or quantity that has no justification for prophylactic, protective, or other peaceful purpose, as well as weapons and means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict. The treaty was signed on April 10, 1972, and entered into force on March 26, 1975. There are currently over 135 parties to the treaty.

### A. EVENTS IN 1998

The year found many countries putting renewed impetus into negotiations for a verification regime to the Biological Weapons Convention. This regime would be manifested in a Protocol to the Convention. The Ad Hoc Group of States Parties to Establish a Regime to Enhance the Effectiveness of Implementation of the 1972 Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological and Toxin Weapons and on their Destruction (Ad Hoc Group) has been meeting in Geneva for several weeks a year since 1994. Many had hoped for an agreed verification regime by the conclusion of 1999, though some desired it sooner.

In March, Australia announced that it would draft a verification regime for the treaty. Australia highlighted Iraq's violation of the BWC, which Iraq signed in 1972, as showing the need for such a regime. At that time, Australia noted its desire to have the regime completed by the end of 1998. In addition, in 1998, Mr. Ken Alibek, a former Soviet biological weapons expert who fled to the United States in 1992, stated that Moscow continued to keep part of its Cold War biological weapons program active.<sup>23</sup> However, Russia has denied such claims, and asserts that it has strictly complied with the BWC.<sup>24</sup>

Two important events occurred in June 1998. First, in a speech at the U.S. Naval Academy in Annapolis, Maryland, President Clinton highlighted the U.S. requirement to strengthen the BWC with a strong system of inspections to detect and prevent cheating—a major priority of the United States. In addition, Clinton announced the start of vaccinations for all U.S. armed forces, active duty and reserve, against the anthrax bacteria, to protect troops against such biological threats. Also in June, China and the United States issued a joint statement on biological weapons and stressed the importance of the BWC. The statement also favored strengthening

23. *Russia Denies Claims That It Still Has Biological Weapons Program*, ASSOC. PRESS, Mar. 31, 1998, available in WESTLAW, ASSOCPR Database.

24. *Id.*

the effectiveness and universality of the BWC.<sup>25</sup> The two states also praised the work being done by the Ad Hoc Group in Geneva. They noted that the verification regime should be efficient, practical, and cost-effective to deter proliferation or violation of the BWC.<sup>26</sup> Lastly, the regime would have to take into account such issues as protection of sensitive commercial information and legitimate security needs.

In September, fifty-seven countries agreed on a declaration calling for a protocol to the BWC. The declaration was issued by a Ministerial meeting at the United Nations in New York, and provides that a strengthened convention with a verification regime would be fundamental to international security. This was the first Ministerial backing for making the ban on biological weapons effective.<sup>27</sup>

In October, the United States called for a speedy conclusion to the negotiations, preferably concluding by the close of 1999. In November, Presidents Yeltsin and Clinton expressed their support for the aims of the Ad Hoc Group. They both urged further intensification of negotiations and the successful conclusion of the negotiations. They stated that the regime must adequately guarantee the protection of national security information.<sup>28</sup> Also in November, Japan proposed to strengthen the BWC and proposed that arms control experts be allowed to visit facilities suspected of producing biological weapons by giving one or two weeks notice.

In Geneva, some countries are proposing that facilities that will be covered by the treaty should declare what they possess and then be subject to site visits to verify that information (similar to what is done in the Chemical Weapons Convention). However, the concern here is that many facilities that could be used to produce biological weapons also have civilian uses, and therefore, hundreds of facilities could be captured by the declarations. Ideas to help relieve this concern include drafting "triggers" that would result in only few facilities being captured by the treaty. For example, only a facility that has worked on offensive or defensive biological weapons would be declared. In that case, most countries would have only a handful of facilities that would have to be declared, while some states would have none.<sup>29</sup> Other such triggers could include those facilities that work with listed pathogens or toxins, possess expertise in genetic manipulation, or are creating aerosols of pathogens.

The biological industry has not been pleased by such "triggers" as they believe such limited declarations would "tarnish" the reputation on those facilities that must make declarations.<sup>30</sup> Instead, they believe a broad range of facilities should be required to make declarations, though such declarations should be as short as possible. Pharmacies are also concerned about potential loss of commercial confidentiality when opening their facilities to inspections. Nevertheless, most in the industry recognize the need for investigations when a treaty violation has occurred. Some academic researchers who fear their labs may fall within the scope of the treaty also share concern over confidentiality. In addition, they fear that the funds required to fulfill compliance declarations will wreak havoc on their already tight budgets.<sup>31</sup>

Negotiations for a regime resumed in January 1999, and are set to continue throughout the year. Most states are striving for the conclusion of such negotiations by the end of 1999.

25. *The Text of a China-US Joint Statement on Biological Weapons*, AGENCE FR. PRESSE, June 27, 1998, available in LEXIS, NEWS Library, CURNWS File.

26. *Id.*

27. *Australia Welcomes Stronger Biological Weapons Convention*, FBIS, Sept. 24, 1998.

28. *Russia: Joint Statement: Biological Weapons*, FBIS, Nov. 19, 1998.

29. Helen Gavaghan, *Arms Control Enters the Biology Lab*, SCIENCE, July 3, 1998, at 29.

30. *Id.*

31. *Id.*

