

its flaws, the United Nations remains one of the best hopes for advancement of the rule of law in the world.

Respectfully submitted,

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**American Bar Association
Section of International
Law and Practice
Standing Committee on
Law and National Security
Report to the House of Delegates*
III. INF Treaty**

RECOMMENDATIONS

BE IT RESOLVED, That the American Bar Association urges the Senate of the United States to give its advice and consent to the ratification of the 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, which Treaty totally eliminates those missiles, and which is subject to effective verification;

BE IT FURTHER RESOLVED, That the American Bar Association recommends that, in future negotiations, the United States give priority to the negotiations on the Strategic Nuclear Arms Reduction Treaty and on conventional arms stability in Europe.

*The report was prepared by the Section's Committee on Arms Control and Disarmament, Thomas Graham, Jr., Chairman.

REPORT

The Treaty on the Non-Proliferation of Nuclear Weapons, designed to prevent the spread of nuclear weapons to additional countries, was signed July 1, 1968, ratified by the United States on November 24, 1969, and entered into force on March 5, 1970. In Article VI "Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament. . . ." This commitment was repeated in subsequent nuclear arms control treaties of which the United States and the Soviet Union are parties.

Mindful of this obligation and conscious that nuclear war would have devastating consequences for all mankind, the United States and the Soviet Union recently signed a treaty to eliminate their intermediate-range (INF) and shorter-range missiles, stating their conviction that the measures set forth in the Treaty would help to reduce the risk of outbreak of war and strengthen international peace and security.

Similarly, the President has expressed the hope that a Strategic Arms Reduction Treaty (START) may be signed within the coming year. Since an uncontrolled arms race in strategic nuclear missiles, with longer, intercontinental ranges and greater firepower, represents a grave threat to world peace and security, the United States has been striving for a generation to control this arms race. This country has had such a proposal on the negotiating table in Geneva since 1982. In the fall of 1986, at Reykjavik, Iceland, President Reagan and General Secretary Gorbachev agreed in principle to a 50% reduction over 5 years to 1,600 strategic nuclear delivery vehicles with 6,000 warheads on them; made important advances in rules for counting bomber loads; and reached agreement in principle on the requirement for "significant cuts" in Soviet heavy ICBMs, the most destabilizing missiles of all.

The possibility of nuclear reductions in both INF and START has focused renewed attention on the conventional imbalance in Europe, heavily in favor of the Warsaw Pact.

No accord has been reached at the Mutual and Balanced Force Reduction Talks in Vienna, but East and West have come forward with new, hopeful initiatives in conventional arms control. In May 1986, NATO Foreign Ministers meeting in Halifax called for strengthened security and stability in the whole of Europe at lower levels of conventional forces. The next month, the Warsaw Pact issued its Budapest Appeal which also called for conventional force cuts from the "Atlantic to the Urals," a much broader area than the MBFR zone.

Following up on the Halifax statement, NATO established the High Level Task Force on conventional arms control to conduct a review of

policy in this area and point the way ahead. One result is a draft negotiating mandate for a conference on force levels—the “stability” talks—among the 16 NATO and 7 Warsaw Pact alliance members. NATO countries tabled this draft mandate on July 27, 1987 in formal East/West discussions taking place in Vienna.

According to U.S. Government sources, the Soviets have shown a clear desire to move ahead promptly toward the establishment of a new conventional stability negotiation. There are serious problems, however, beginning with the Soviet refusal to admit their overall conventional superiority. The Soviets also want to mix “tactical” nuclear systems into the conventional talks. They hope in this way to pursue their objective of de-nuclearizing Europe through the back door, as it were. The U.S. priorities, in a post-INF environment, should be to reduce strategic nuclear as well as chemical and conventional weapons before tackling short-range nuclear systems.

In addition, NATO’s approach should, as a matter of priority, focus on ground forces, i.e., those forces most essential to an invasion capability, the ability to seize and hold territory; must not be simply a reductions proposal—stability may be approached through a variety of means, including limitations, redeployments, and related measures, as well as reductions; and it must be verifiable with adequate exchange of information.

The INF Treaty is the result of long negotiations described in the annex, which, after considerable difficulty, led to an agreement not only on the total elimination of intermediate-range and shorter-range missiles, but also to more effective means of verification than previously possible.

By means of this resolution and the recommendations contained therein, the American Bar Association would be supporting: (a) the United States goal of controlling the nuclear arms race with meaningful reductions by the ratification of an effectively verifiable 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; and (b) the further strengthening of the existing regime of nuclear arms control and lessening the likelihood of conventional conflict which could escalate into nuclear war.

Respectfully submitted,

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Annex

Negotiating History of the INF Treaty

Soviet achievement of strategic nuclear parity with the U.S. in the mid-1970s, and Soviet deployment of mobile, triple-warhead intermediate-range SS-20 missiles beginning in 1977, led to a growing imbalance of intermediate-range nuclear forces in Europe. As the SS-20 missile force grew with no countervailing U.S. missiles deployed in Europe, European members of NATO were concerned that Moscow might come to believe U.S. strategic forces could be decoupled from the defense of Europe. Such a misconception could call into question the strategies of deterrence and flexible response that have kept the peace in Europe.

Following intensive consultations, NATO decided in December 1979 on a "dual-track" response:

- *Phased deployment in Europe* of 572 U.S. longer-range INF missiles (LRINF missiles—those with a range of 1,000–5,500 km., *i.e.*, 600–3400 mi.). Up to December 1986, the U.S. had deployed 316 LRINF missiles: 108 Pershing II ballistic missiles and 208 ground-launched cruise missiles.
- At the same time, *negotiations with the USSR* to establish a global balance in U.S. and Soviet LRINF missiles at the lowest level and to seek constraints on shorter-range INF missiles (SRINF missiles—500-1,000 km., *i.e.*, 300-600 mi. range).

Negotiating developments between 1981 and 1987 were as follows:

- *November 1981*—Bilateral U.S.-Soviet negotiations on INF began at Geneva. At that time, the U.S. proposed the "zero option," banning or eliminating all U.S. and Soviet LRINF missile systems, including Soviet SS-20s, SS-4s and SS-5s, and the U.S. Pershing IIs and ground-launched cruise missiles. The Soviets rejected this proposal.
- *March 1983*—Although the global zero option remained the U.S. preferred outcome, the U.S. proposed an interim agreement for equal global limits on LRINF missile warheads at any number below planned U.S. deployments.
- *November 1983*—The Soviets walked out of the INF talks, protesting the arrival of the first U.S. LRINF missiles in Europe, although they had continued throughout the negotiations to deploy SS-20 missiles.
- *March 1985*—The Soviets returned to the talks and agreed to a new set of arms control negotiations, the nuclear and space talks (NST), that include INF.
- *November 1985*—At the Geneva Summit, President Reagan and General Secretary Gorbachev agreed to accelerate work toward an interim INF agreement separate from other NST issues.

- *October 1986*—At their Reykjavik meeting, the two leaders agreed in principle to an equal global limit of 100 warheads on LRINF missiles for each side, with none in Europe. The remaining missiles would be deployed in Soviet Asia and on U.S. territory. In addition, the two sides agreed to exclude for each side, with none in Europe. The remaining missiles would be deployed in Soviet Asia and on U.S. territory. In addition, the two sides agreed to exclude UK and French systems and to constrain SRINF missile systems in an INF agreement, positions long held by the U.S. Mr. Gorbachev, however, insisted on a “package” agreement linking INF to strategic arms reductions and defense and space issues.
- *February 1987*—Mr. Gorbachev reversed course and announced that the USSR was now ready for a separate INF agreement. The U.S. then presented an INF draft treaty text at Geneva in *March*. This draft text reflects the Reykjavik INF agreement. In response, the Soviet Union presented a draft on *April 27*.
- *April 1987*—Secretary Shultz met in Moscow with Mr. Gorbachev and Foreign Minister Shevardnaze, and Mr. Gorbachev proposed the global elimination of U.S. and Soviet SRINF missiles. (The U.S. has no deployed SRINF missiles; the Soviet Union has deployed more than 100 such missiles.)
- *June 1987*—NATO foreign ministers expressed their support for the verifiable global elimination of all U.S. and Soviet SRINF missiles. Reflecting the NATO recommendation, the President announced that the U.S. would support the elimination of U.S. and Soviet SRINF missiles, provided it was global, bilateral, effectively verifiable, an integral part of an INF agreement, and included the Soviet SS-12 and SS-23. The U.S. presented this proposal in Geneva and emphasized the continued U.S. preference for the global elimination of U.S. and Soviet LRINF missiles as well.
- *July 1987*—Gorbachev announced a change in the Soviet position on INF. The Soviets essentially accepted the “double global zero” proposal.
- *August 1987*—Soviet arms negotiator Obukhov said that the USSR will consider a compromise to resolve U.S.-Soviet differences over West Germany’s Pershing 1A missiles. The Soviets had called the missiles “the main barrier” to an INF agreement and had demanded elimination of these missiles.

U.S. arms negotiator Max Kampelman stated: “We will not, in a bilateral relationship between the United States and the Soviet Union, have a provision in that agreement which affects our allies.”

Chancellor Kohl of the Federal Republic of Germany announced that West Germany will dismantle its 72 shorter-range INF Pershing

1A missiles, and will not replace them with more modern weapons, if the United States and the Soviet Union would:

eliminate all of their own LRINF and SRINF missiles as foreseen under the proposed INF Treaty; adhere to whatever schedule is agreed to for eliminating their missiles;
comply with the terms of the Treaty.

The Soviet Union welcomed Chancellor Kohl's statement. A spokesman for the Soviet Foreign Ministry stated the possibility of concluding a new superpower arms agreement was now "realistic."

- *September 1987*—New U.S. verification proposals called for what our government calls the most stringent verification regime in arms control history. Key elements of the proposal included:

detailed exchange of data on INF missiles and launchers and associated support facilities; notification of movement of missiles and launchers; baseline inspection to verify number of missile and launchers; on-site inspection to verify elimination of missiles and launchers; close-out inspection at declared facilities to ensure that INF-related activities have ended; short-notice inspection of declared facilities and of certain other missile-related facilities in the U.S. and USSR to ensure against illegal missile activity, for thirteen years after entry into force of the Treaty.

Following a meeting in Washington, Secretary of State Shultz and Soviet Foreign Minister Shevardnadze announced that the U.S. and the Soviet Union had reached agreement in principle to conclude an INF Treaty.

- *October 1987*—It was announced that the U.S. and Soviet Union had agreed on a mutually satisfactory way of handling the Pershing 1A issue that takes into account the statement by Chancellor Kohl and U.S. plans concerning disposition of the warheads for the Federal Republic's Pershing 1A missiles, but which puts no limit on these third country missiles in the text of the U.S.-Soviet INF Treaty.

During meetings between Secretary Shultz and Foreign Minister Shevardnadze, the United States and the Soviet Union agreed that General Secretary Gorbachev would visit Washington beginning December 7, 1987, and that he and President Reagan would sign the INF Treaty.

ERRATUM

The Recommendation and Report on Public Disclosure by Foreign Investors, published in the Fall 1988 issue of THE INTERNATIONAL LAWYER, was prepared by the Committee on Foreign Investment in the United States, Michael F. Butler, Chairman.

