VIEWPOINT: THE DUMA-SENATE LOGJAM ON ARMS CONTROL: WHAT CAN BE DONE?

by George Bunn & John B. Rhinelander

There is a growing logjam of arms control treaties waiting for approval in both the Russian State Duma and the U.S. Senate. Without decisive action, this logjam will probably prevent approval by the world's two largest military powers of the Strategic Arms Reduction Treaty (START II) of 1993, the Comprehensive Test Ban Treaty of 1996 (CTBT), amendments to the Anti-Ballistic Missile (ABM) Treaty, and the protocols of the Treaty of Pelindaba (creating an African nuclear-weapon-free zone (NWFZ)) and the Treaty of Rarotonga (creating a South Pacific NWFZ) before the end of the century. It will also prevent progress towards START III and further bilateral nuclear reductions. (For a list of treaties affected, see the Appendix.)

The reasons for this logjam can be found both in the domestic politics of each country and in broader changes wrought by the end of the Cold War: new crops of post-Cold War legislators are focused more on domestic problems than on international relations; many remain suspicious of the other country's intentions and therefore have adopted highly nationalistic attitudes towards arms control; finally, reforms in the Russian government have created an unprecedented ability to block treaties, as the newly formed State Duma begins to exercise its independence from the executive branch. For these reasons, both the U.S. Senate and the Russian Duma have been unwilling to follow the lead of their presidents in arms control.

The threat implicit in the continued inaction of these two national bodies, however, is that it could derail much of the progress that has been achieved in post-Cold War arms control and nonproliferation efforts. If extended further, the logjam could cause a severe reaction by non-nuclear weapon states party to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), which believe that they made a "pact" in 1995 with the nuclear weapon states (NWS) in agreeing to the indefinite extension of the treaty. Thus, if *ratification* of the CTBT, further steps in the START process, and other arms control measures remain blocked by the Duma and the Senate, the *quid pro quo* promised to these non-weapon states for forswearing nuclear weapons for all time may well be seen as being denied. With both the nuclear negotiations promised for the Middle East peace process and U.S.-Russian nuclear reductions stymied, the seven Islamic governments that strongly criticized the NPT decision after it was made—Egypt, Lebanon, Libya, Iraq, Malaysia, Nigeria, and Syria—could form the nucleus of a Non-Aligned Movement (NAM) group threatening withdrawal from the NPT.[1] Such a threat could rupture the near consensus that was achieved within the NPT on indefinite extension and that has supported joint action in cases such as Iraq and North Korea, resulting in a crisis for the NPT. Already, at the April 1997 Preparatory Committee (PrepCom) meeting of NPT parties, attempts by the five NWS to block substantive recommendations on disarmament united almost all non-nuclear weapon parties temporarily against the NWS, including allies of the Five.[2] It is too early to say whether this will recur at the PrepComs scheduled for 1998 and 1999 or at the review conference in 2000, but a continued Duma-Senate logjam will provide even more reason for dissent than was present in 1997. If Duma-Senate action to reverse current trends does not occur, are there any alternative means of showing U.S.-Russian progress on arms control and nonproliferation in order to avoid a potential NPT crisis?

This essay first examines the roots of the current

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Duma-Senate logjam in the area of arms control and nonproliferation treaties. It then considers a series of alternative measures to direct treaty ratification that have been taken in the past by U.S. and Russian leaders to implement arms control and nonproliferation measures *by other means*: 1) reciprocal unilateral measures; 2) political commitments; and 3) executive agreements that do not require legislative ratification. While these measures do not replace treaties, this essay argues that they can, in some instances, provide meaningful temporary steps until political conditions are ripe for formal legislative action. Interestingly, none of these measures are new to the arms control field. But, as shown below, it appears likely that U.S. and Russian leaders will have to make active and creative use of these alternative means if they are going to survive the current logjam without causing damage to broader post-Cold War arms control and nonproliferation efforts internationally.

REASONS FOR THE CURRENT LOGJAM

At its most basic roots, the causes of the Duma-Senate logjam can be found in the nature of the treaty ratification process in Russia and the United States. Although treaties are generally negotiated by the executive branch (and are often signed by the presidents themselves), international treaties in the two countries must be ratified by their respective legislatures. In both countries, legislative consent has become extraordinarily difficult to obtain in recent years. This situation stands in sharp contrast to the typically easy process of treaty approval in many other states, either because their governments are authoritarian (and all power resides in the executive branch—as was the case in the Soviet Union) or because they are parliamentary democracies (where the prime minister automatically controls a majority in the parliament—as in much of Western Europe). Neither condition holds today in Russia and the United States. Instead, both presidents find themselves beholden to a legislative majority not of their own parties, and yet they require their legislatures' consent for the ratification of international treaties. In the United States, this process requires a two-thirds vote of the Senate alone. In Russia, the ratification process requires a majority vote of first the State Duma (lower house) and then the Federation Council (upper house). If the Federation Council rejects the treaty, the State Duma can override it with a two-thirds majority. Yet, these legalistic parameters provide little insight into the *political* issues that dominate the two bodies today. In order to understand the current logjam, we must examine these in detail.

Current Conditions in the Russian Duma and U.S. Senate

Overriding all arms control and nonproliferation issues in Russia is the decision of the United States and its allies to enlarge the North Atlantic Treaty Organization (NATO) by including, in the first wave, Poland, the Czech Republic, and Hungary. Without question, this move has increased hostility in the Duma toward the West and toward arms control agreements with the United States.[3] The NATO-Russian charter or "Founding Act" negotiated to reduce this hostility may not be voted on by either the Duma or the Senate because it is considered to be a "political" agreement, not a treaty.[4] No Duma member publicly supports NATO expansion. The Founding Act seems to have reduced only slightly the Duma members' hostility to NATO expansion and to have countered their argument that expansion justified their decision to put off a vote on START II again—though it has been pending in the Duma for over two years.[5]

At the Helsinki Summit in March 1997, Presidents Clinton and Yeltsin attempted to deal with serious Duma objections to START II. The first was NATO expansion. The Founding Act had not been completed when they met, and they simply agreed to disagree on expansion.[6] In a later radio address to the Russian people, Yeltsin described the Founding Act as an effort "to minimize the negative consequences of NATO's expansion and prevent a new split in Europe."[7]

They dealt with a second important Duma objection, American plans for theater missile defenses (TMD), by authorizing two agreements relating to the ABM Treaty to provide "demarcation" criteria to distinguish permitted TMDs from prohibited ABMs.[8] Later, as part of the price for getting the Senate to vote on the Chemical Weapons Convention (CWC), the Clinton administration consented to having these two demarcation agreements go before the Senate after they had both been completed.[9] But, there is little prospect that the two will be approved by the Duma or the Senate.[10] Indeed, on the American side, because of the hostility of conservative Republicans to the ABM Treaty, the Senate, as a condition to approving the "flank" amendment to the Conventional Forces in Europe (CFE) Treaty, required the Clinton administration to promise the Senate another ABM agreement. This

new agreement will simply recognize that Russia and several other former Soviet republics—now independent states with ABM related equipment on their territories—have succeeded to Soviet responsibilities related to this equipment under the ABM Treaty.[11]

If the Duma approves START II, the START II amendment, and the two ABM Treaty demarcation amendments, then this succession agreement and the two demarcation amendments to the ABM Treaty are likely to be sent to the Senate together with an amendment to extend the implementation deadline of START II. But Senate approval of the succession agreement and demarcation amendments is likely to be blocked by those Senate Republicans who want to kill the ABM Treaty.[12] Without approval of any successor states for the ABM Treaty, conservatives will argue, the treaty no longer exists because the other party, the Soviet Union, no longer exists.[13] But if the ABM Treaty remains in force without Senate consent to the succession agreement, as President Clinton is certain to maintain (correctly we believe), and if it is not amended by the demarcation amendments, some of the current U.S. TMD development and testing programs would likely produce Russian charges of ABM Treaty violation.[14] Most Duma members want the ABM Treaty to continue unchanged, as does the Yeltsin government and the Russian Strategic Rocket Forces leadership.[15]

A third major Duma objection to START II is its cost, including building the single-warhead, land-based strategic missiles required by START II (to replace multi-warhead ones that must be eliminated), if Russia wants to maintain parity with the United States at START II levels.[16] Clinton and Yeltsin dealt with this problem by agreeing in principle to negotiate lower limits on strategic weapons in a START III treaty so that Russia would not have to make and deploy more single-warhead missiles to maintain parity. The limits they agreed upon, however, now appear not to be low enough to deal with Russian cost problems, according to Russian experts. To reduce Russian maintenance costs and to obviate the perceived Russian need to make new missiles, the goal, agreed to at Helsinki for the START III reductions, of 2,000 to 2,500 strategic warheads on each side must be reduced to perhaps 1,000 to 1,500 warheads.[17] Pentagon agreement to such a START III goal is not likely soon. Meanwhile, START II together with the ABM demarcation amendments will likely continue to await action by the Duma.

The CTBT will also become part of the Duma-Senate logjam since Clinton submitted it to the Senate on September 22, 1997. The Duma will likely wait on the Senate. Unlike the CWC, which was largely negotiated during Republican administrations and signed by President Bush, negotiation of a comprehensive test ban was opposed by the Reagan and Bush administrations and by the 1996 Republican party platform on which Bob Dole ran for president. Moreover, the CTBT was signed by President Clinton.[18] Given past strong opposition by Republicans, the battle likely to be provoked by the treaty's inspection provisions in the Senate, and the Duma's likely delay until after the Senate acts, the Senate may well delay a vote until after the 1998 elections. There is no important industrial group affected by the CTBT that will lobby for it like the Chemical Manufacturers' Association did for the CWC. Many Senate Republicans who voted for the CWC are certain to oppose the CTBT, unless Senate Majority Leader Trent Lott strongly supports it—which is unlikely. Even if President Clinton succeeds in persuading Republican Senator Pete Dominici to lead the fight for the treaty in the Senate, Senator Lott is unlikely to follow, and, without him, most Republicans will oppose the treaty. Approval in the Senate before the next century is therefore doubtful.[19]

The CTBT cannot become effective without approval by Russia, the United States, and 42 other states (including India, which has refused even to sign).[20] Barring unforeseen circumstances, the CTBT will not come into force for a long time. After a few years, if there still seems to be no prospect that it will become effective and one or more of the Five resumes testing, the 40-year effort to achieve a CTBT could very well collapse again.

There are other important treaties that are or will be caught in the logjam. The CWC, though approved by the Senate in May 1997, was put aside in Russia in an attempt to get financial assistance from other countries, including the United States, to cover the high costs of destroying the Russian chemical weapons stockpile. While assistance by the European Union is promised, the growing Duma-Senate hostility could make the U.S. Congress even less receptive to major requests for assistance, particularly when the cost of destroying U.S. chemical weapons is high and the president and Congress have agreed to balance the budget by 2002.[21]

In addition, there are two signed treaties creating NWFZs in Africa and the South Pacific that would obli-

gate the Five not to use nuclear weapons against the non-nuclear weapon parties to the zones.[22] They have not been submitted to either the Duma or the Senate. Both raise the issue whether nuclear weapons can be used against these parties if they attack a nuclear weapon state, such as the United States or one of its allies, with chemical or biological weapons. This issue was raised during Senate consideration of the CWC because the United States has long provided "negative" security assurances to the non-nuclear weapon parties to the NPT. Such assurances promise that the United States will not use nuclear weapons against these states unless they attack the United States or its allies with the support of a nuclear weapon state.[23] Because the language of these assurances seemed to preclude a nuclear response to, for example, a chemical attack by Libya on U.S. forces in the Mediterranean, a bipartisan group of Senate CWC supporters proposed vague rhetoric for the Senate resolution of ratification saying "that the use of chemical weapons against United States military forces or civilians would result in an overwhelming and devastating response, which may include the whole range of weaponry." This statement clearly implies possible use of nuclear weapons.[24] Not satisfied with this, Senate Republicans insisted on a condition stating the Senate's understanding that "deterrence of attack by chemical weapons requires a reevaluation of the negative security assurances extended to non-nuclear-weapon states."[25] This condition suggests reevaluation, not only of the negative assurances to non-nuclear weapon NPT parties, but of those to African and South Pacific zone parties. Assurances to those parties also contain no explicit exception saying that the United States may respond with nuclear weapons to an attack with chemical or biological weapons by a non-nuclear weapon party to the zone. But the treaties for these zones have been signed by all or almost all potential parties besides the United States; change in their language is unlikely and certainly not within the control of the United States. When the assurance protocols signed by the United States are submitted to the Senate, they will bring into sharper focus the issue of nuclear retaliation raised by the CWC—with an additional concern over attacks with biological weapons.[26] These two treaties are not likely to be voted on soon.

There are, moreover, several other important arms control treaties that have been or are likely to be submitted to the Duma and the Senate and caught up in the logjam.

MEANS FOR CONTINUING U.S.-RUSSIAN ARMS CONTROL—DESPITE THE LOGJAM

What can be done to continue the nuclear arms control process while the logjam in the Duma and the Senate continues? One obvious step would be to negotiate a detailed agreement in principle outlining what a START III treaty should contain. As we have seen, the joint statement of the two presidents at the March 1997 Helsinki summit now appears to be based upon a mistake as to how low the U.S.-Russian strategic warhead level must go to deal with Russian budget problems, including paying for new missiles to satisfy START II and maintaining old ones to keep up with the number of strategic warheads to be retained by the United States. In addition, the influential chairman of the Duma committee on defense, once a START II supporter, has said that a much more detailed agreement on the goals of START III than the one provided by the Helsinki Summit was needed to gain support in the Duma for START II. While negotiating such an agreement would take time, the continuing budget problems and the ongoing reorganization of Russian political parties make Duma approval of such an important arms control treaty as START II very doubtful now.[27] But an agreement in principle on what START III should contain could outline reductions to lower levels that would help deal with the Russian budget problem. This problem is a central preoccupation of the Russian government, the effects of which are likely to concern the Duma for years.[28] Obsolescence and Russia's budget-driven military reform will produce reductions in Russian strategic weapons in any event, but probably not in the pattern required by START II. An agreement on what a START III treaty should contain would not need to be approved by the Duma or Senate because it would not itself be a binding treaty. But it appears to be a necessary, if not sufficient, condition to break the logjam. Moreover, we believe such a negotiation would help keep the START treaty negotiating process alive over the next few years until the logjam is broken.

Equally important, it would be wise to pursue other measures that can be accomplished without treaties. The constitutions and statutes of both Russia and the United States impose limits on what can be done without a treaty. In both countries, the president may negotiate and sign arms control and reduction treaties, but the legislature must approve them.[29] Under a 1995 Russian statute, "treaties" that pertain to "the defense capability of the Russian Federation," or to "disarmament or international

arms control" and to the maintenance of "international peace and security" must be approved by both houses of the Russian Federal Assembly.[30] But "executive" agreements authorized by the president of Russia that do not go this far do not need legislative approval.

Under the U.S. Constitution, although treaties must be approved by the Senate, other forms of agreement besides treaties, which do not require Senate approval, have long been recognized. For arms control agreements, an important limit is the 1961 Arms Control and Disarmament Act prohibition on executive actions that "obligate the United States to disarm or to reduce or to limit the Armed Forces or armaments of the United States in a militarily significant manner, except through the treaty making power of the President as set forth in...the Constitution or unless authorized by further affirmative legislation by the Congress of the United States."[31]

Reciprocal Unilateral Measures

Other forms for arms control measures have frequently been used by Russia and the United States in the past. Indeed, much arms control has been accomplished without treaties—or even formal agreements—beginning in the Eisenhower administration with a U.K.-U.S.-Soviet moratorium of several years on nuclear weapon testing. During the Kennedy and Johnson administrations, there were reciprocal announcements of intentions not to test nuclear weapons in the atmosphere or put them into orbit around the earth, reciprocal announcements of intended reductions in military budgets and in fissionable material production for nuclear weapons, as well as reciprocal but secret withdrawals of some troops from East and West Germany.[32]

Called "arms control without agreement" or "reciprocal unilateral measures," none of these involved written, signed agreements or were submitted to a legislature for approval.[33] The most important nuclear arms control measures achieved in this form came during the Bush administration, when the Soviet Union was about to disintegrate. President Bush announced the withdrawal of most U.S. non-strategic nuclear weapons from Europe and all such weapons from U.S. naval surface vessels. Over 3,000 warheads for nuclear artillery, short-range missiles, depth charges, and gravity bombs would, he said, be dismantled. Long-range bombers, plus strategic ballistic missiles scheduled for deactivation under START I, were taken off alert, and several advanced ballistic missile development programs were terminated.[34]

General Secretary Mikhail Gorbachev reciprocated (and his actions were confirmed by Boris Yeltsin when he succeeded Gorbachev) by announcing his intention to withdraw all Soviet non-strategic weapons from its naval vessels and from regional outposts on land to "central bases" in the Soviet Union—which resulted in the withdrawal of non-strategic weapons from the Warsaw Pact countries and from the former republics of the Soviet Union, which soon became independent states. Many of the weapons withdrawn—nuclear artillery projectiles, nuclear land mines, and nuclear warheads for non-strategic land and naval missiles—were to be dismantled, Gorbachev said. Long-range bombers and some 500 ICBMs were taken off alert; rail-mobile missiles were returned to main bases; and certain missile development programs were terminated.[35]

The Bush-Gorbachev measures were dramatic achievements in withdrawing and dismantling nuclear weapons, but they were never submitted to any legislature for approval. Later, in the Nunn-Lugar Cooperative Threat Reduction Program, Congress authorized financial assistance to Russia to help protect the resulting warheads, warhead components, and weapons-usable fissile material from theft or diversion by terrorists or by other nations during transportation and storage.[36] Perhaps the largest single authorized expenditure was for a building for safe storage of dismantled warhead "pits" and "secondaries"—key weapon components from the reciprocal unilateral measures applicable to non-strategic warheads, as well as strategic weapons from the START I reductions.[37]

The 1995 Russian Law on International Treaties had not yet been enacted when these unilateral but reciprocal actions were taken. None of them violated the U.S. Arms Control and Disarmament Act because none of them "obligated" the United States to disarm or to limit its arms. That also was a disadvantage: either side could implement a change of mind more easily if there were no obligation. A recent report by U.S. Under Secretary of Defense Walter Slocombe on progress on dismantling non-strategic nuclear weapons—including those taken out of service as a result of the Bush-Gorbachev-Yeltsin initiatives—states that the Russians have "made far less progress thus far than the United States, and the Russian non-strategic arsenal (deployed and stockpiled) is probably about ten times as large as ours."[38] Indeed, a few Russian military experts have suggested the likelihood of greater Russian reliance on non-strategic land-based

and even sea-based nuclear weapons.[39]

Not only do unilateral-reciprocal measures lack obligation, but they usually do not authorize reciprocal monitoring and may not be verifiable by satellite observation or other intelligence. The United States appears to be confident from intelligence and from data exchanges that all Soviet nuclear warheads have been withdrawn to Russia from former Warsaw Pact members and former Soviet republics that split from Russia, but does not know how many of those withdrawn have been dismantled, deployed somewhere in Russia, or stockpiled there.[40]

There has long been a U.S.-Russian executive branch consensus on the goal of providing some form of verification for the warhead dismantlement taking place on both sides, and an amendment of the U.S. Atomic Energy Act was adopted to make the necessary agreement on the exchange of classified information for dismantlement inspection possible without the usual Congressional layover period that the act provides for agreements of cooperation in nuclear matters.[41] But, so far, little verification of warhead dismantlement has taken place, except for the uranium from Russian weapons being sold to the United States (a project described below). The most recent delay has come from the Russian side as a result of concerns that—because the agreement of cooperation involved weapons information—it might have to be submitted to the Duma under a statute prohibiting disclosure of weapons secrets.[42]

A March 1997 Clinton-Yeltsin summit communique announced that when START III was negotiated the negotiators should provide for "measures relating to the transparency of strategic nuclear warhead inventories and the destruction of strategic nuclear warheads and any other jointly agreed technical and organizational measures, to promote the irreversibility of deep reductions including prevention of a rapid increase in the number of warheads."[43] This is a worthy goal, but, as stated, it is part of the START III negotiation, which will not begin (unless the United States changes its position) until the Duma approves START II.

Could the unilateral but reciprocal reduction procedure Bush and Gorbachev used for withdrawing non-strategic nuclear weapons be applied to strategic weapons if the Duma does not act on START II? Let us assume that both sides can be assured against cheating by reciprocal observation of the withdrawal of the missiles or warheads from active deployment, or of the destruction of the missiles and dismantling of the warheads. If so, what happens if the Duma does not approve START II but the Yeltsin government decides to reduce strategic warheads to 1,500 in a way that is less costly for it than the START II requirements—provided the United States will go down to that overall level in a way that is best for it?

The Senate enacted a condition to its approval of START II that would limit but not preclude the U.S. executive branch from participating in such reciprocal reductions. The Senate's condition to its consent to START II says that, if the Duma does not approve START II but the president nevertheless wants to implement cuts in strategic forces below START I levels:

> …then the President shall (i) consult with the Senate regarding the effect of such reductions on the national security of the United States; and (ii) take no action to reduce United States strategic nuclear forces below that currently planned and consistent with the START Treaty until he submits to the Senate his determination that such reductions are in the national interest of the United States.[44]

Thus, if President Clinton were to choose to go this route (and there are no indications that he plans to do so), he would have to report what his plans were to the Senate. Moreover, in another part of its resolution of ratification, the Senate made clear that, in reductions pursuant to either START treaty, the president should see to it that the number of treaty accountable warheads possessed by the Russian Federation "in no case exceeds the comparable number of accountable war heads possessed by the United States to an extent that a strategic imbalance endangering the national security interests of the United States results."[45] This might well be the test the Senate and the president should apply to unilateral but reciprocal strategic reductions if the Duma fails to approve START II but Russia wants to go down in parallel with the United States anyway.

Political Commitments

A second non-treaty alternative for executive action (the first being reciprocal unilateral measures) is a "political" commitment. These can be written, signed agreements, and are allowed by U.S. and Russian statutes as long as they do not produce international legal obligations like a treaty does. (The distinction between a binding legal agreement and a commitment that is only "politically binding" is not always clear.[46] Indeed, a court might

well hold what the parties called a "political commitment" to be legally binding.) As indicated above, the Russian-NATO Founding Act is thought to be only "politically binding."

One of the first important uses of this form since World War II was the Nixon-Brezhnev Agreement on the Prevention of Nuclear War of 1973.[47] In this agreement, the Soviet Union and the United States agreed to act in such a way "as to prevent the development" of dangerous situations, "as to avoid military confrontations, and as to exclude the outbreak of nuclear war between them and between either [of them] and other countries." Later, under President Ford, the United States agreed to the Helsinki Accords of 1975, in which NATO states traded non-aggression commitments sought by Moscow for freedom-and-democracy commitments sought by the West and used later by dissidents in the East to criticize repression by Soviet and other Warsaw Pact governments.[48]

An important use of "political" agreements for arms control was by President Ronald Reagan. He authorized U.S. participation in the negotiations that produced the 1986 Stockholm Accord, a multilateral written agreement providing, among other things, for limits on the size of military maneuvers by American and other forces in Europe, for advance notification for large maneuvers, for on-site inspections, and for exchanges of military observers.[49] Reagan insisted that the agreement be in the form of a "political obligation," yet that it be verified to "assure that what has been promised will be done."[50] The Stockholm Accord has less dignity than a treaty and was not submitted to the Senate. Nevertheless, it has been treated seriously by the parties.

Similarly, the Missile Technology Control Regime (MTCR), also begun during the Reagan administration, is an informal export control agreement among major suppliers of missile-related materials and equipment.[51] It consists of a set of export control guidelines that participating states agree to follow and an annex listing materials and technologies subject to the guidelines.[52] Its purpose is to stem the spread of ballistic and cruise missiles, especially those intended for delivery of weapons of mass destruction. Russia has recently become an MTCR member. Though MTCR guidelines have had a significant impact and have limited missile technologies that can be exported, they are neither a treaty nor an otherwise legally binding agreement.[53] Yet they have been a useful arms control tool, recognized as such by the Senate. In its approval of START II, the Senate urged the president to insist that Russia and the other former Soviet republics that are parties to START II "abide by the guidelines" of MTCR, which it described as a "policy statement" between named parties "to restrict sensitive missile-related transfers...."[54]

The Australia Group is a similar arrangement that attempts to achieve common export controls over materials and technology that might be used to make biological and chemical weapons. Relying on this organization in its approval of the CWC, a Senate condition requires annual certification by the president that the Group "remains a viable mechanism for limiting the spread of chemical and biological weapons-related materials and technology...."[55] Again, there is no formal treaty, only political agreements and reciprocal actions.

A great many U.S.-Russian "political" commitments also appear in joint statements from meetings of the presidents, of the vice-president and prime minister, or of the ministers responsible for foreign affairs, defense, and nuclear energy. These include, for example, commitments on the goals for future treaties on arms control, for future partnership projects, and for future cooperative agreements authorizing exchanges of classified information.[56] As we have seen, the Atomic Energy Act's method for exchanging such information is stalled in Russia. One "political" means of accomplishing limited information exchanges might be for Russia and the United States to declassify information that should not still be classified, and then to provide it to each other or to international inspectors. If declassified, the information could be exchanged without the need for a formal legal agreement. When former Secretary of Energy Hazel O'Leary declassified information concerning past nuclear weapon tests conducted by the United States, and when U.S. weapons labs provided Nunn-Lugar financial assistance to Russian weapons labs in order to collect parallel Russian data, publication of the data on both sides became possible.[57] Similarly, the U.S.-Russian Holdren-Velikov Commission of nuclear experts recommended the declassification by Russia and the United States of the "average amount of plutonium in a weapon component or 'pit,' and the key features of the radiation signature from such components." This would allow inspectors from the other side or from the International Atomic Energy Agency to count pits stored individually in closed containers, thus measuring the number of warheads dismantled without learning how they are made.[58]

Another political agreement is needed to keep the CTBT norm against nuclear testing alive pending ratification by all of the necessary 44 states, including Russia and the United States. This could take the form of a Five-power agreement to continue the current international moratorium on testing. The Five avowed NWS have already negotiated some political agreements concerning arms control.[59] What is needed is a political commitment not to test until the CTBT goes into force or, at least, while there is still some prospect of its entering into force. It would not need to be a formal agreement requiring submission to the Duma or the Senate.[60]

Steps to take U.S.-Russian nuclear forces off alert and to change first-use and launch-on-warning doctrines could be among the most important that Russia and the United States could take while the Duma-Senate logjam continues. They could be accomplished by unilateral but reciprocated measures or by political agreements. Precedents include the Bush-Gorbachev reciprocal unilateral measures removing warheads from missiles and taking bombers off alert, as well as the Clinton-Yeltsin political agreement to "detarget" American and Russian strategic missiles.[61]

Various measures to reduce the launch readiness of nuclear forces have been proposed by the U.S. National Academy of Sciences Committee, the Canberra Commission, and others.[62] At their Helsinki summit, Presidents Clinton and Yeltsin agreed that, after START II was approved by the Duma, both sides would deactivate missiles to be reduced by START II by taking off their warheads or by other means even before the missiles were to be downloaded or eliminated pursuant to the extended deadlines agreed for START II. There are, of course, other methods besides warhead removal for deactivation, methods, which like warhead removal can be reversed if relations become hostile.

Why could deactivation not be done as a reciprocal unilateral measure or as a political agreement without awaiting Duma approval of START II? Why could it not go beyond START II levels to those agreed to for START III or lower, assuming on the U.S. side that the president reported what had been agreed to the Senate? Though deactivation is reversible, it makes hair-trigger decisions and accidental or unauthorized launches of nuclear-armed missiles less likely because it takes some time to return the warheads to the missiles.

Executive Agreements

A third way to avoid the Duma-Senate logjam would be to pursue executive agreements. These are used by both Russia and the United States when a treaty is not required by statute or constitution. In the United States, executive agreements on arms control may reduce or limit arms if "authorized by further affirmative legislation by the Congress...." The Atomic Energy Act authorization for cooperative agreements involving classified information is, of course, an example of this form.[63] No comparable provision for executive agreements authorized or approved by the legislature is in the 1995 Russian statute. However, no reason appears why a Russian statute could not be adopted authorizing future executive agreements of a particular kind, or approving an executive agreement already negotiated.

Another kind of executive agreement is one that is neither authorized by a prior statute nor approved by a later one. Such an agreement could be legally binding for the United States if it did not constitute a U.S. obligation "to reduce or limit" its armed forces or arms "in a militarily significant way," according to the language of Arms Control and Disarmament Act. Under the 1995 Russian statute, such agreements would appear to be appropriate as long as they did not pertain "to the defense capability of the Russian Federation," to "disarmament or international arms control," or to the maintenance of "international peace and security...."[64] This seems similar in meaning to the U.S. statute and may permit the same sorts of executive agreements.

U.S.-Soviet precedents for executive arms control agreements not approved by any legislature include the Moscow-Washington "hot line" agreement of 1963 (and its modernization and expansion in 1971 and 1984), the Incidents at Sea Agreement of 1972 (establishing anti-harassment rules for naval aircraft and vessels of the two countries), and the Ballistic Missile Launch Notification Agreement of 1988.[65] In addition, this form was used for many of the arrangements by which the United States provided—among other things—equipment, technical, and financial assistance to Russia and its former republics of Belarus, Kazakstan, and Ukraine to help increase the security of nuclear weapons and weapons-usable fissile material as they were moved out of the former republics, stored at central locations in Russia, and dismantled. Much of the funding for these agreements was authorized by the 1991 Nunn-Lugar legisla-

tion.[66] A Bush-Yeltsin executive agreement of June 17, 1992, then provided the initial "legal framework for the transfer of up to $400 million of Department of Defense funds authorized" by the Nunn-Lugar Act. This agreement was the "basic vehicle for providing Nunn-Lugar assistance to Russia for the transport, safeguarding, and destruction of nuclear, chemical and other weapons of the Soviet Union."[67] Many "implementing" executive agreements followed, some "government to government," some "ministry to ministry," and some "laboratory to laboratory" (between nuclear weapon labs in the United States and Russia).[68]

These agreements, among other things, helped Russia dismantle the non-strategic weapons withdrawn pursuant to the Bush-Gorbachev reciprocated unilateral measures, and protected those (as well as strategic) warheads during transportation and storage. The agreements did not "obligate" either side to reduce its arms, but they certainly made reduction more likely and more secure. They were not submitted to the Senate or the Duma for approval. U.S. legislators voting for Nunn-Lugar funding authorization may well have assumed that the executive agreement form would be used because it is such a common U.S. practice.

Another series of agreements that helped bring about nuclear weapons reductions also began in the Bush administration after the Bush-Gorbachev reciprocated unilateral measures. On August 31, 1992, President Bush announced the initialing of an executive agreement to buy up to 500 metric tons of highly enriched uranium from Russian weapons, enough for roughly 20,000 weapons.[69] The agreement had been preceded by talks between Russian Ministry of Atomic Energy (Minatom) officials and American businessmen interested in selling the uranium in diluted, non-explosive form for use in civilian reactors.[70] In February 1993, a 20-year government-to-government agreement along the lines of the one initialed earlier was signed. Since then, several amendments have been agreed to, again in executive agreement form.[71] The uranium will be sold commercially for use in civilian reactors and would not have been purchased but for the fact that it came from (or could be used for) Russian weapons and therefore represented weapons dismantlement.[72] There are legally-binding government-to-government agreements covering this sale, agreements that include verification to assure the United States that the uranium did come from nuclear weapons.[73] The agreements also commit the United States not to use the uranium for future U.S. weapons and provide for Russian observation at sites where the uranium will be processed in the United States—to assure Russia that this U.S. commitment will be observed.[74]

Another legally binding executive agreement is the Gore-Chernomyrdin agreement of June 23, 1994, in which Russia promised to convert two weapons-grade plutonium production reactors to civilian uses, and the United States promised not to use its comparable production reactors at Hanford and Savannah River to make weapons plutonium again.[75] The agreement did not obligate Russia or the United States to reduce or limit their arms, but it promises to prevent the further production of weapons-grade plutonium in the two countries.

CONCLUSION

The different examples of cooperation discussed above show that major arms control initiatives are possible without formal treaties. While such actions may not be the most desirable form of arms control, they do present at least some hopeful alternatives to the current logjam. But these measures are limited by their vulnerability to subsequent Duma and Senate legislation or action on governmental budgets.

While more treaties are being held up by the inaction of the Duma than by the Senate, the current characteristics of the bodies have much in common that is inimical to arms control by treaty: the presence of many members who are nationalistic, inexperienced in international affairs, suspicious of the other country, and unwilling to follow the lead of their president in arms control negotiations. These factors, unfortunately, are not likely to change overnight.

In order to break up the logjam, one of three types of changes will have to occur, either: 1) members will have to change their current views (perhaps due to a nuclear catastrophe or a threat by non-nuclear states to quit the NPT unless there are further arms reductions); 2) new elections will have to alter the make-up of the two bodies in a way more favorable to arms control treaties (more likely in the Russian Duma, due to the phased nature of Senate turnover); or 3) forceful presidential leadership on the two sides will bring action within the two bodies to deal with the current backlog. Regrettably, none of these options seems especially likely in the near-term. However, given the fact that both President Clinton and President Yeltsin are serving their last term in office,

there would seem to be greater incentive as the end of their terms near to make dramatic accomplishments to secure their places in history. If this motivation brings progress in arms control, so much the better.

Failing such dramatic action, we may be in for a long period of stagnation, or at least arms control through other means. Hopefully, these alternative measures (unilateral reciprocated actions, "politically binding" written agreements, and executive agreements) will allow us to make progress in the daunting tasks ahead: the dismantling of thousands of nuclear weapons, the removal of others from alert, the protection of nuclear-weapon-usable materials from theft or transfer to other countries and terrorist groups, and, in general, the maintenance of the NPT regime and the reduction of the threats of nuclear proliferation and nuclear war.

[1] An Arms Control and Regional Security Working Group, including Israel, Arab states, the United States and others, has met several times as part of the Middle East peace process—without accomplishing anything as far as nuclear weapons are concerned. Egypt has long supported a nuclear-weapon-free zone in the Middle East, and Israel has supported agreement on such a zone when the rest of the peace process is successful. A General Assembly resolution supporting the creation of such a zone is adopted almost every year by consensus. In 1990, the secretary-general of the United Nations issued a very useful experts' study on effective and verifiable measures which would make such a zone possible. U.N. Doc. A/45/435, Oct. 10, 1990. Jordan and other Arab states have expressed recent interest in negotiating a zone free of all weapons of mass destruction.

[2] Rebecca Johnson, "NPT Update: Reviewing the NPT: The 1997 PrepCom," *Disarmament Diplomacy* (April 1997), pp. 9, 24.

[3] See Michael R. Gordon, "NATO Pact Clouds Fate of Arms Cuts, A Yeltsin Aide Says," *The New York Times* (National edition), May 16, 1997, p. A1; Spurgeon M. Keeny, Jack Mendelsohn, John Rhinelander and John Steinbruner, "Arms Control and the Helsinki Summit: Issues and Obstacles in the Second Clinton Term," *Arms Control Today* 27 (March 1997), pp. 9-16; Craig Cerniello, "Duma Criticizes Helsinki Outcome; Postpones START II Discussions," *Arms Control Today* 27 (April 1997), p. 34; Address by Duma Deputy Alexei Arbatov at Monterey Institute of International Studies, Monterey, California, August 4, 1997; Jack Mendelsohn, "NATO Expansion: A Decision to Regret," *Arms Control Today* 27 (June/July 1997), p. 2.

[4] Michael Gordon, "Russia Agrees to NATO Plan Pushed by Clinton to Admit Nations from Eastern Bloc, A Reluctant O.K.," *The NewYork Times* (National edition), May 15, 1997, pp. A1-A8; Gordon, "NATO Clouds Fate of Arms Cuts;" Rhinelander in Keeny, Mendelsohn, Rhinelander and Steinbruner, "Arms Control and the Helsinki Summit," p.13. Jack Mendelsohn, "The NATO-Russian Founding Act," *Arms Control Today* 27 (May 1997), p. 19. A personal communication from a representative of the Russian Committee of Scientists for Global Security reports that a Duma lawyer said that "they don't consider this document [to be a] 'legally binding treaty' according the Vienna Convention on International Treaties." Fax of June 4, 1997 from Leonid Ryabikhin to George Bunn.

[5] See Gordon, "NATO Clouds Fate of Arms Cuts;" R.W. Apple, "Europe's New Order: Making a Club, Not War," *The New York Times* (National edition), May 18, 1997, Sec. 4, p.1; Thomas Friedman, "NATO Water," *The New York Times* (National edition), May 19, 1997, p. A13; Rodney W. Jones, "START II Ratification and Related Issues," Report of Moscow discussions with Duma members and others, May 18-24, 1997 (Carnegie Endowment, June 1997); Cerniello, "Duma Criticizes Helsinki Outcome;" Address by Alexei Arbatov on August 4, 1997; Mendelsohn, "NATO Expansion;" Ben Sanders, *Programme for Promoting Nuclear Non-Proliferation Newsbrief No.38* (2nd Quarter, 1997), p. 5. President Yeltsin submitted START II to the Duma for approval in June of 1995.

[6] See Jack Mendelsohn and Craig Cerniello, "The Arms Control Agenda at the Helsinki Summit," *Arms Control Today* 27 (March 1997), p.16; Presidents William Clinton and Boris Yeltsin, "Joint U.S.-Russian Statement on European Security," Communique of March, 1997 Helsinki Summit, reprinted in *Arms Control Today* 27 (March 1997), pp. 20-21; Gordon, "NATO Clouds Fate of Arms Cuts."

[7] Mendelsohn, "The NATO-Russian Founding Act," p. 20.

[8] See Mendelsohn and Cerniello, "The Arms Control Agenda," pp.17-18; Clinton and Yeltsin, "Joint U.S.-Russian Statement Concerning Anti-Ballistic Missile Treaty," p. 20. The first amendment deals with slower incoming missiles and the second deals with faster ones.

[9] Letter of March 26, 1997, from Assistant to the President for National Security Affairs, Samuel R. Berger, to Senate Majority Leader Trent Lott.

[10] See Carla Anne Robbins, "Senate Battle on Arms Control is Still Far From Over," *The Wall Street Journal*, May 6, 1997, p.1; John Rhinelander in Keeny, Mandelsohn, Rhinelander, and Steinbruner, "Arms Control and the Helsinki Summit," p.13; Mendelsohn and Cerniello, "The Arms Control Agenda at the Helsinki Summit," p.18; Address by Maj. Gen. (ret.) Vladimir Belous, Section Chief, Center for Scientific Research, Committee of Scientists for Global Security at Moscow Conference with Stanford Center of International Security and Arms Control, June 30-July 2, 1997; Address by Lt. Gen. (ret.) Mikhail Vinogradov, Director of the Section for Scientific Research and Member of Russian Academy of Sciences, at the same June 30-July 2, 1997 Conference; Address by Alexei Arbatov, August 4, 1997. The view of the three Russians just cited was that the Helsinki Summit agreements designed to produce Duma acceptance of the START II Treaty were insufficient to do so. All of them had once been START II supporters. All three thought it very unlikely that the Duma would approve the ABM Treaty demarcation amendments.

[11] Condition 9 to the Flank Agreement Resolution of Ratification approved by the Senate Foreign Relations Committee May 8, 1977 and approved by the Senate the following week. President Clinton responded with a letter to Congress of May 15, 1997 promising to submit "to the Senate for advice and consent to ratification any international agreement (i) that would add one or more countries to the ABM Treaty, or otherwise convert the ABM Treaty from a bilateral treaty to a multilateral treaty; or (ii) that would change the geographic scope or coverage of the ABM Treaty...." We do not believe that Senate advice and consent should be necessary as a legal matter for an agreement reflecting succession by successor states to the treaty responsibilities of their predecessor. See George Bunn and John B. Rhinelander, "The Arms Control Obligations of the Former Soviet Union," *Virginia Journal of International Law* (Winter 1993), p.323.

[12] Robbins, "Senate Battle on Arms Control is Still Far From Over;" Rhinelander in Keeny, Mendelsohn, Rhinelander and Steinbruner, "Arms Control and the Helsinki Summit," p.13. Later, under the March 1997 Helsinki joint statements, START I is to be amended as part of START III negotiations to make START I permanent so that it will not soon expire. However, this will require ratification by not just Russia and the United States but also by Belarus, Kazakstan, and Ukraine which were added as parties to START I

because of the Soviet strategic missiles and heavy bombers left on their territory when they became independent at the end of 1991. The Ukrainian Rada's prolonged consideration of START I delayed its entry into force for more than a year. See Bunn and Rhinelander, "The Arms Control Obligations of the Former Soviet Union," p. 346-347.

[13] As indicated in an earlier note, this argument is not consistent with international law which recognizes that nation states that succeed an earlier state inherit the arms control responsibilities of that earlier state.

[14] See Belous, "Will START Be Ratified?" p. 8; Belous, Address of July 2, 1997.

[15] President Yeltsin's letter submitting START II to the Duma for approval said: "Of course, ratification is possible only if the ABM Treaty is preserved in its initial form." See letter to Chairman of the Duma, I.P. Rybkin, No. Pr.-819, June 20, 1995. For a sampling of Russian expert opinion on the problems and what the Duma is likely to do, see, e.g., Major General (ret.) Vladimir Belous, "Will START II Be Ratified?" *Yaderny Kontrol* (Winter 1996/97), pp. 5, 7, 8; Pavel Podvig, "Could Russia Save the ABM Treaty?" *Yaderny Kontrol* (Winter 1996/1997), pp.2-4; Anton Surikov, "START II: Contradictions Are Still There," *Yaderny Kontrol* (Winter 1996/97), pp. 9-10; Joseph Cirincione, Moscow Trip Report, May 17-23, 1997 (Washington, D.C.: Stimson Center, 1997); Address of Alexei Arbatov of August 4, 1997.

[16] See Belous, "Will START II Be Ratified?" pp. 5-7. The Russian legislature, including both the Duma and the Council of Federation, has for some time been engaged in a major struggle with the Yeltsin administration over very sharp cuts in the government budget proposed by Yeltsin because tax collections have produced little more than 50 percent of what was estimated earlier when the budget was first formulated. At the moment, resolution of this controversy appears to be stalemated. See Address of Sergei Rogov, Director, U.S.A.-Canada Institute of Russian Academy of Sciences to Carnegie Endowment seminar on Strategic Arms Control, June 11, 1997, Washington, D.C.

[17] Address of Sergei Rogov, June 11, 1997; Statement of John Steinbruner, Member of the U.S. National Academy of Sciences Committee on International Security and Disarmament, at Arms Control Association Board of Directors meeting, June 11, 1997.

[18] See Rhinelander in Keeny, Mendelsohn, Rhinelander, and Steinbruner," Arms Control and the Helsinki Summit," p.13.

[19] See Robbins, "Senate Battle on Arms Control Is Still Far From Over;" Rhinelander in Keeny, Mendelsohn, Rhinelander, and Steinbruner, "Arms Control and the Helsinki Summit," p.13. For an account of the efforts necessary to gain the Senate's approval of the CWC after an election giving the Republicans the chairmanships of the committees that reviewed the treaty, see Amy Smithson, "Bungling a No-Brainer: How Washington Barely Ratified the Chemical Weapons Convention," in Michael Krepon, Smithson, and John Parachini, *The Battle to Obtain U.S. Ratification of the Chemical Weapons Convention* (Washington, D.C.: Stimson Center, 1997), p. 7. In the same report, see Krepon, "The New Politics of Treaty Ratification," p.1, and Parachini, "NGOs: Force Multipliers in the CWC Ratification Debater," p. 35.

[20] See Conference on Disarmament, "Draft Comprehensive Nuclear Test-Ban Treaty," CD/NTB/WP.330/Rev.1, Art. XIV and Annex 2.

[21] Organization for the Prohibition of Chemical Weapons, *OPCW Synthesis* (July 1997), p. 2. The Senate's resolution of advice and consent to the CWC (the "Convention" in the following quotation) contains this condition (Sec.2(14)): "FINANCING RUSSIAN IMPLEMENTATION. The United States understands that, in order to be assured of the Russian commitment to a reduction in chemical weapons stockpiles, Russia must maintain a substantial stake in financing the implementation of both the 1990 Bilateral Destruction Agreement and the Convention. The United States shall not accept any effort by Russia to make deposit of Russia's instrument of ratification contingent upon the United States providing financial guarantees to pay for implementation of commitments by Russia under the 1990 Bilateral Destruction Agreement or the Convention."

[22] For a description of these treaties, see George Bunn, "Expanding Nuclear Options: Is the U.S. Negating Its Non-Use Pledges?" *Arms Control Today* 26 (May/June 1996), pp. 8-9.

[23] See George Bunn, "The Legal Status of U.S. Negative Security Assurances to Non-Nuclear Weapon States," *The Nonproliferation Review* 4 (Spring-Summer 1997), p. 1.

[24] Draft Senate Resolution of advice and consent to the Chemical Weapons Convention, December 18, 1996, approved by Senators Lugar, Pell, Kassebaum, Biden, and Kerry, Declaration e(3).

[25] S. Exec. Res. 75, 105th Cong., 1st Sess., (1997), Sec.2(8)(A). This condition also requires that the President submit to Congress by late September 1997 "a classified report setting forth the findings of a detailed review of United States policy on negative security assurances, including a determination of the appropriate responses to the use of chemical or biological weapons against the Armed Forces of the United States, United States citizens and allies, and third parties." Sec.2(8)(B).

[26] See Bunn, "Expanding Nuclear Options," pp. 8-10. The June 1997 report of the National Academy of Sciences Committee opposes using, or threatening the use of, nuclear weapons to counter attacks with biological or chemical weapons. Committee of International Security and Arms Control, *Future of U.S. Nuclear Weapons Policy*, pp. 53, 71-72.

[27] Rodney W. Jones and Nikolai N. Sokov, "After Helsinki, the Hard Work," *Bulletin of the Atomic Scientists* (July/August 1997), pp. 26, 27-28; Cirincione, "Moscow Trip Report, May 17-23, 1997." After the March Helsinki agreement, this trip report states, Gen. Lev Rokhlin, Chairman, Duma Committee on Defense, asked for a much more detailed framework agreement on what START III would contain, adding: "We require more details and in document form." Later, according to the Vice-Chairman of that Committee, Rokhlin helped to organize a new Russian political party to be responsive to the needs of Russian armed forces, veterans and defense industry. He is unlikely to continue supporting START II. Several other political parties have also been formed or restructured. Address of Alexei Arbatov of August 4, 1997. In July and August, 1997, Arbatov, Belous, and Vinogradov were all of the opinion that the Helsinki Summit agreements designed to make START II acceptable to the Duma were insufficient to do so. See Addresses of Belous and Vinogradov at the June 30-July 2 conference in Moscow.

[28] See, e.g., Michael Spector, "Yeltsin's Plan to Cut Military Touches a Nerve," *The New York Times* (National edition), July 28, 1997, p. 1. This reported the likely reaction to Yeltsin decrees calling for the most fundamental military reforms in modern Russian history, including reducing the size of the military by 600,000 people, consolidating armed forces units, and cutting expenditures for weapons. Gen. Rokhlin, Chairman of the Duma Defense Committee, is reported to be urging spending more money, not less, on the military. Discussions in Moscow during June and July of 1997 with military experts of the Russian Committee of Scientists for Global Security, a Defense Ministry think tank, indicate that the costs of maintenance of missile-carrying submarines at sea is such that they are now almost all in port *even when on alert.* Yet, in the American view, these forces should form a part of the backbone of the START II strategic forces that are to be invulnerable to attack—if at sea. If submarines on alert are kept in port, they are more vulnerable than the SS-18 multi-warhead missiles which the Russians are supposed to eliminate under START II. With issues like this to face, military reform debates are likely to consume Russian governmental attention for a long time.

[29] Russian Federation Constitution, Art.104; 1995 Russian Federal Law on International Treaties, Arts. 11 and 12; 1996 Russian Federal Law of Defense, Art.4. par.2(17). (See electronic-mail message June 23, 1997 to George Bunn from Bakhtiar Tuzmukhamedov, Counselor, Constitutional Court of the Russian Federation.) U.S. Constitution, Art.II, Sec.2; U.S. Arms Control and Disarmament Act of 1961, Sec.33, 22 U.S.C. Sec.2573 (1994).

[30] 1995 Russian Law on International Treaties, Art. 15, par. 1. Until fairly recently, the Federation Council's members have been appointed by Yeltsin and have been much more responsive to his wishes than the independently elected Duma. What changes may occur as the Council becomes more and more composed of elected officials is difficult to predict.

[31] Sec.33, as amended in 1994, 22 U.S.C. Sec. 2573 (1994).

[32] For the history of the measures in the Eisenhower, Kennedy, and Johnson

administrations, see George Bunn, *Arms Control by Committee: Managing Negotiations with the Russians* (Stanford, CA: Stanford Univ. Press, 1992) pp. 240-252. For an early discussion of the legality of non-treaty forms for arms control, see George Bunn, "Missile Limitation: By Treaty or Otherwise?" *Columbia Law Review* (January 1970), p.1

[33] Kenneth L. Adelman, "Arms Control With and Without Agreements," *Foreign Affairs* (Winter 1984-85), pp. 240; Bunn, *Arms Control by Committee*, p. 235.

[34] Robert S. Norris and William M. Arkin, "Nuclear Notebook, Disarmament Race, September-October 1991," *Bulletin of the Atomic Scientists* (December 1991), p. 49. For text of Bush statements, see "A New Era of Reciprocal Arms Reductions," *Arms Control Today* 21 (October 1991), pp. 3-6.

[35] Norris and Arkin, "Nuclear Notebook;" "A New Era of Reciprocal Arms Reductions." For text of Gorbachev statement, see "A New Era of Reciprocal Reductions."

[36] See James Goodby, "Loose Nukes: Security Issues on the U.S.-Russian Agenda" (Stanford, CA: Stanford University Center for International Security and Arms Control, 1997), pp. 4-5; Dunbar Lockwood, "The Nunn-Lugar Program: No Time to Pull the Plug," *Arms Control Today* 25 (June 1995), pp. 8-9; Graham T. Allison, Owen R. Cote, Jr., Richard A. Falkenrath, and Steven E. Miller, *Avoiding Nuclear Anarchy: Containing the Threat of Loose Russian Nuclear Weapons and Fissile Material* (Cambridge, MA: MIT Press, 1996), pp. 4-5.

[37] John P. Holdren, "Reducing the Threat of Nuclear Theft in the Former Soviet Union," *Arms Control Today* 26 (March 1996), pp. 14-15; Allison, Cote, Falkenrath, and Miller, *Avoiding Nuclear Anarchy*, pp. 106-107.

[38] "Statement of the Honorable Walter B. Slocombe, Under Secretary of Defense for Policy before the Senate Governmental Affairs Subcommittee on International Security, Proliferation and Federal Services, Hearing on Nuclear Weapons and Deterrence," February 12, 1997.

[39] See, e.g., Belous, "Will START II Be Ratified?" p. 8; Surikov, "START II: Contradictions Are Still There," p. 9; Nikolai Sokov, "Tactical Nuclear Weapons: New Geopolitical Realities of Old Mistakes?" *Yaderny Kontrol* (Winter 1996/97), p.11; William C. Potter, "Unsafe at Any Size," *Bulletin of the Atomic Scientists* (May/June, 1997), pp. 25-27.

[40] See Allison, Cote, Falkenrath, and Miller, *Avoiding Nuclear Anarchy*, pp. 112-118.

[41] See, e.g., Presidents Clinton and Yeltsin, "Joint Statement on the Transparency and Irreversibility of the Process of Reducing Nuclear Weapons," May 10, 1995, White House Press Secretary, Moscow. This reaffirmed the desire expressed at January and September 1994 summit meetings and at lower level meetings "to exchange detailed information on aggregate stockpiles of nuclear warheads, on stocks of fissile materials and on their safety and security and to develop a process for exchange of this information on a regular basis." Congress had authorized the U.S. side to enter into an "agreement of cooperation" pursuant to the Atomic Energy Act "without having to submit it to Congress for the [usual] 60-day review [layover] process." See News Brief, "Progress on U.S.-Russian Data Exchange Agreement," *Arms Control Today* 25 (June 1995), p. 33.

[42] See Jones and Sokov, "After Helsinki, the Hard Work," p. 29; News Brief, "Progress on U.S.-Russian Data Exchange Agreement," p. 33; The U.S.-Russian Holdren-Velikov Commission of nuclear experts has recommended that an initial agreement be much more limited than the original plan: "In order to assuage concerns, an initial agreement on classified information might be limited to those specific types of information needed for monitoring plutonium and HEU [highly enriched uranium] from dismantled weapons." White House, Office of Science and Technology Policy, "Interim Report of the U.S.-Russian Independent Scientific Commission on Disposition of Excess Weapons Plutonium," September 16, 1996, p.13.

[43] Clinton and Yeltsin, "Joint Statement on Parameters on Future Reductions in Nuclear Forces," p.19.

[44] See "START II Resolution of Ratification, par. b(7). *Arms Control Today* 26 (February 1996), p. 31. As a legal matter, this provision is part of a resolution that has no binding effect if START II does not go into effect. However, it was clearly designed to be operative if START II did not go into effect, and any president would probably be well advised to accept its requirement of submitting a plan for what had been worked out with the Russians before making the reductions. Submitting such a plan would not, of course, produce a requirement for a Senate vote before the plan was carried out.

[45] *Ibid*., par. c(2).

[46] See, e.g., Bunn, "The Legal Status of U.S. Negative Security Assurances," p.11.

[47] ACDA, *Arms Control and Disarmament Agreements: Texts and Histories of Negotiations* (Washington, D.C.: Government Printing Office, 1996 edition), p. 129.

[48] Final Act of the Conference on Security and Cooperation in Europe, 1975. This and related recent agreements involving the Organization for Security and Cooperation in Europe, are politically binding, not legally binding, agreements—including the Charter of that organization. See James E. Goodby, "The Stockholm Conference: Negotiating a Cooperative Security System for Europe" in Alexander L. George, Philip J. Farley, and Alexander Dallin, *U.S.-Soviet Security Cooperation: Achievements, Failures, Lessons* (New York: Oxford U. Press, 1988), p.144, 148.

[49] ACDA, *Arms Control and Disarmament Agreements*, p. 231. Goodby, "The Stockholm Conference," pp. 144-145. Goodby, the U.S. negotiator for the Stockholm Accords, points out that this, like the Helsinki Accords, was not a "legally binding treaty." p. 148.

[50] Statement by U.S. Representative Kampelman to the Madrid Conference of the Final Act of the Conference on Security and Cooperation in Europe, February 16, 1981, ACDA, *Docs. on Disarm*., v.1981, pp. 61-62.

[51] See John H. Cushman, "7 Nations Agree to Limit Export of Big Rockets," *The New York Times* (National edition), April 17, 1987, p.1.

[52] See U.S. General Accounting Office, "U.S. Efforts to Control the Transfer of Nuclear-Capable Missile Technology: Report to Senator Dennis DeConcini" (June 1990), p. 2-3.

[53] Arms Control Association, "Background Paper: The Missile Technology Control Regime," September 1993.

[54] "START II Resolution of Ratification," *Arms Control Today* 26 (February1996), pp. 30, 32.

[55] S. Exec. Res. 75, Sec. 2, par.7(C)(i)(II).

[56] See, e.g., Bush-Yeltsin "Joint Understanding" on a framework for the negotiation for START II, White House Press Secretary, June 17,1992; Bush-Yeltsin "Charter for American-Russian Partnership and Friendship," White House Press Secretary, June 17, 1992; Clinton-Yeltsin "Joint Statement on the Transparency and Irreversibility of the Process of Reducing Nuclear Weapons," White House Press Secretary (Moscow), May 10, 1995. For examples at lower levels, see, e.g., Gore-Chernomyrdin and O'Leary-Mikhailov joint statements. Allison, Cote, Falkenrath, and Miller, *Avoiding Nuclear Anarchy*, pp. 109-110, 116.

[57] See Keith Schneider, "U.S. Reveals a Few More of Its Atomic Secrets," *The New York Times* (National edition), June 28, 1994.

[58] The White House, Office of Science and Technology Policy, *Interim Report*, p.14.

[59] Negotiations among the Five produced new undertakings with respect to security assurances for non-nuclear-weapon NPT parties and a parallel U.N. Security Council Resolution in 1995. The security assurance undertaking not to use nuclear weapons against non-weapon NPT parties is regarded by the United States as a political commitment. See Bunn, "The Legal Status of U.S. Negative Security Assurances." More recently, the five negotiated a joint statement about their progress and goals for nuclear arms control. See Statement of Britain, China, France, Russia and the United States at the 1997 Preparatory Committee meeting for the 2000 NPT Review Conference.

[60] We believe that, under the Vienna Convention on the Law of Treaties, signing the CTBT created an international law norm against testing for each signer as long as it continues to intend to bring the CTBT into force for itself when that is possible. See Bunn and Rhinelander, "U.S. Should Lead Effort to Enforce Legal Norm Against Testing," *Arms Control Today* 26 (October 1996), p. 30.

[61] The Bush-Gorbachev reciprocal unilateral measures are discussed above. On January 14, 1994, Presidents Clinton and Yeltsin "announced that they will direct the detargeting of strategic nuclear missiles under their respective commands. This means that by May 30, 1994, no country will be targeted by the strategic forces of either side.... Detargeting will involve changing weapon-system control settings so that on a day-to-day basis, no country, including Russia, Ukraine, or any other former Soviet territory, will be targeted by U.S. strategic forces. Russia has told the United States that their detargeting measures are comparable." White House, Office of the Press Secretary, (Moscow), January 14, 1994.

[62] See, e.g., Canberra Commission on the Elimination of Nuclear Weapons, *Report* (Canberra, Australia: Canberra Commission, August 1996), pp. 53-55; Steering Committee Project on Eliminating Weapons of Mass Destruction, *An American Legacy: Building a Nuclear-Weapon-Free World, Final Report* (Washington, D.C.: Stimson Center,1977) p. 9; National Academy of Sciences, *The Future of U.S. Nuclear Weapons Policy*, pp. 29-30, 40-42, 62-65.

[63] Section 123 of the Atomic Energy Act of 1954, as amended. Another kind of Congressionally approved executive agreement is that approved after the event. See, e.g., the Interim Agreement of 1972, ACDA, *Arms Control and Disarmament Agreements*, p.121. The Senate dislikes this form and has said that it would not consider them if they obligated the United States to reduce or limits its arms or forces "in a militarily significant manner." S.Exec.Res.75, Sec.2 (25).

[64] Law on International Treaties of the Russian Federation, June 16, 1995, Sec.15.1(d).

[65] Memorandum of Understanding between the United States and the Soviet Union Regarding the Establishment of a Direct Communications Link, 1963, ACDA, *Arms Control and Disarmament Agreements*, p.19; Hot Line Modernization Agreement, 1971, ACDA, *Arms Control and Disarmament Agreements*, p. 91; Hot Line Expansion Agreement, 1984, ACDA, *Arms Control and Disarmament Agreements*, p. 228; Agreement between the United States and the Soviet Union on the Prevention of Incidents on and over the High Seas, Moscow, 1972; ACDA, *Arms Control and Disarmament Agreements*, p.105; Ballistic Missile Launch Notification Agreement, 1988, ACDA, *Arms Control and Disarmament Agreements*, p. 347.

[66] Soviet Nuclear Threat Reduction Act of 1991, as amended, reprinted in Note to 22 U.S.C.A. Sec.2551 (1997 pocket part).

[67] White House, Office of the Press Secretary, June 17, 1992, "Agreement on the Destruction and Safeguarding of Weapons and the Prevention of Weapons Proliferation Between the United States and Russia."

[68] Goodby, "Loose Nukes," p. 4; Lockwood, "Nunn-Lugar Program," p. 12; Allison, Cote, Falkenrath, and Miller, *Avoiding Nuclear Anarchy*, pp. 89, 97, 106.

[69] Michel Knapik, "U.S. Agrees to Buy Russian HEU, But Details Must be Worked Out," *Nuclear Fuel*, Special Issue, September 2, 1992, pp. 4-5; Fact Sheet on U.S. Russian Agreement on Highly Enriched Uranium, *Nuclear Fuel*, Special Issue, September 2, 1992, p. 3; William J. Broad, "From Soviet Warheads to U.S. Reactor Fuel," *The New York Times* (National edition), September 6, 1992, p. E-4.

[70] See Protocol dated July 3, 1992 between Minatom, the Russian Academy of Sciences, U.S. Nuclear Fuel Services, Inc. and Allied-Signal, Inc.

[71] See Department of Energy, News Release, March 18, 1994, attaching "Protocol on HEU Transparency Arrangements in Furtherance of the Memorandum of Understanding of September 1, 1993;" White House, Office of the Press Secretary (Moscow), "Highly Enriched Uranium," January 14, 1994; Address by Thomas L. Neff, "Liquidating the Cold War," Leo Szilard Award Presentation, April 19, 1997, M.I.T., Cambridge, MA.

[72] Holdren, "Reducing the Threat of Nuclear Theft," p. 18; Allison, Cote, Falkenrath, and Miller, *Avoiding Nuclear Anarchy*, p.103;

[73] See U.S. Department of Energy and Russian Minatom, "Protocol on HEU Transparency Arrangements in Furtherance of the Memorandum of Understanding of September 1, 1993," March 18, 1994.

[74] *Ibid*.; Holdren, "Reducing the Threat of Nuclear Theft," pp. 18-19; John P. Holdren, John F. Ahearne, Richard L. Garwin, Wolfgang K.H. Panofsky, John J. Taylor and Matthew Bunn, "Excess Weapons Plutonium: How to Reduce a Clear and Present Danger," *Arms Control Today* 26 (November/December1996), p. 3; Allison, Cote, Falkenrath, and Miller, *Preventing Nuclear Anarchy*, pp.117-118; Neff, "Liquidating the Cold War."

[75] See Todd Perry, "Stemming Russia's Plutonium Tide: Cooperative Efforts to Convert Military Reactors," *The Nonproliferation Review* 4 (Winter 1997). For the text of the predecessors of the Gore-Chernomyrdin agreement, see Department of Energy, News Release, March 16, 1994, "U.S., Russia Agree to Studies, Inspections to Further Implementation Goals," attaching "Protocol of Meeting Between the United States and Russian Federation on the Replacement of Russian Plutonium Production Reactors," and "Joint Statement on Inspection of Facilities Containing Fissile Materials Removed from Nuclear Weapons," March 16, 1994. Because Russia production reactors also provide heat and power to large areas and are not easily or quickly replaceable for that purpose, the agreement permits temporary conversion to plants the spent fuel of which will not require near-term reprocessing. Eventually the plants will be replaced. See Holdren, "Reducing the Threat of Nuclear Theft," p.18; Allison, Cote, Falkenrath, and Miller, *Avoiding Nuclear Anarchy*, pp. 108-111.

Appendix:

Treaties Needing Approval of U.S. Senate/Russian State Duma

TREATY	PRESIDENTIAL ACTION	SENATE/DUMA STATUS	PROSPECTS
NATO enlargement	Russia-NATO Foundin Act signed by executive branch leaders not to be submitted to Senate an perhaps not to Duma; but agreements with three new NATO members will be submitted to Senate (no Duma).	NATO enlargement now popular in Senate but costs, strength of Russian hostility, effect of likel exclusion of Baltics and Ukraine from later expansions, and meaning for U.S. in future of Article V security guarantee to new states not yet debated	Agreements on new members likely to be approved by Senate; Duma unlikely to approve Founding Act.
START II	Major efforts were made by both presidents at Marc 1997 Helsinki Summit, including promises of deeper reductions in START III (to meet Russian parity problem), delay of dismantlement dates under START II, and agreed limits on U.S. TMD/BMD efforts.	Senate approved START II in 1996. No Duma action due to NATO expansion, costs of achieving parit with U.S. in single warhead ICBMs, and U.S. TMD/BMD efforts. If Duma approves START II with agreed change in dates, then START II, as amended by Duma, must be resubmitted to Senate.	Duma approval unlikely, certainly not without Helsinki changes, and Senate will not approve changes before Duma acts. Senate approval then problematic.
Chemical Weapons Convention (CWC)	Tremendous effort by Clinton administration in spring of 1997 to gain Senate approval.	Senate approved 74-26, exacting major concessions on State Department reorganization, CWC understandings, and submission of ABM Treaty amendments. Duma put off CWC action, seeking help on costs.	Duma action needed bu unlikely in near future.
Open Skies Treaty	Sent to Senate in first Clinton year (1993).	Approved by U.S. Senate in 1993; not yet approved by Russian Duma (or by Belarus or Ukraine).	Duma approval unlikel soon.
Conventional Forces in Europe (CFE) Treaty amendments	Framework agreement reached in July 1997 to shift to country-by-country aggregates for weapons; but detailed ceilings remain to be negotiated.	Senate/Duma and other states must approve amendments.	Unclear.
Ottawa Anti-Personnel Landmine Treaty	Neither U.S. nor Russia will join Canadian effort, which has nearly 90 proposed signatories fo December 1997.	All six Vietnam veterans in the Senate are part of broad coalition supporting legislation, but support for treaty uncertain in light of continuing opposition by Joint Chiefs of Staff.	U.S./Russia not yet signatories.

TREATY	PRESIDENTIAL ACTION	SENATE/DUMA STATUS	PROSPECTS
Anti-Ballistic Missile (ABM) Treaty Amendments	Clinton agreed to send two demarcation amendments to Senate. Also, agreement that Belarus, Kazakstan, and Ukraine are obligated by the treaty.	Strong Republica opposition to ABM Treaty, and these amendments. If Duma approves ABM amendments while also approving START II, then START II will be explicitl linked to maintaining ABM Treat *status quo* (unless and until amendments enter in effect).	Not likely to be approved in Duma (as part of START II package), and not likely to be approved in Senate standing alone. Other states must also approve demarcation agreements.
Comprehensive Test Ban Treaty (CTBT)	Will not go into effect for years even if Senate and Duma approve because India and 41 others must also ratify. But, five nuclear weapons states ma continue moratoriu anyway.	CTBT opposed by Reagan, Bush, and 1996 Republican platform. Duma will probably wait on Senate, which is unlikely to act before 2001.	Prospects not good now in either body.
Pelindaba and Rarotonga Treaty protocols regarding nuclear-weapon-free zones (NWFZs)	Nuclear non-use protocols to African and Pacific NWFZ treaties signed b U.S. and Russia.	Like CWC, these raise issue of nuclear use against BW or CW attack on U.S. forces. Duma may act first.	Uncertain, but unlikel soon.
START III	March 1997 Helsinki Summit called for START III reductions to 2,000-2,500 strategic warheads to help Duma approve START II. Russia likely to seek negotiation of START III Treaty before Duma acts on START II.	If Duma does not approve START II, U.S. is presentl not willing to negotiate START III. Unclear whether Senate or Duma will approve START III if and when negotiated.	Not yet negotiated.
IAEA Model Protocol	Board of Governors of IAEA (including U.S. and Russia) has approved Model Protocol covering inspections of clandestine activities. Bilateral negotiations with IAEA not completed	Protocol could raise problems with weapons laboratories because of sensitivity of environmental monitoring equipment expected to be used.	Uncertain, at least as to timing, in both Senate and Duma.
Biological Weapons Convention (BWC) Protocol	Both governments are participating in negotiations to provide compliance and enforcement protocol for BWC, which lacks verification provisions. U.S. target to complete negotiations in 1998 unlikely to be met.	Unlike CWC, BWC Protocol was *not* negotiated or approved by Republican administration; industry less likely to support inspections; and verification much more problematic. Major Russian achievements in BW are believed to have taken place in violation of BWC.	Not yet negotiated.