

The Arms Control Obligations of the Former Soviet Union

GEORGE BUNN* AND JOHN B. RHINELANDER**

I. INTRODUCTION

The Soviet Union disappeared as a nation-state at the end of 1991¹ while possessing an estimated 27,000 deployed nuclear weapons (11,000 strategic and 16,000 tactical) spread among its constituent republics, and enough bomb-grade highly enriched uranium and plutonium for approximately 90,000 unsophisticated nuclear bombs.² In

* George Bunn is a member of the Stanford Center for International Security and Arms Control and professor emeritus and former dean of the University of Wisconsin Law School. He was general counsel of the U.S. Arms Control and Disarmament Agency during the negotiation of the nuclear Non-Proliferation Treaty of 1968 ("NPT"), and participated in its negotiation.

** John B. Rhineland is a partner in the Washington, D.C. law firm of Shaw, Pittman, Potts & Trowbridge, vice chairman of the Arms Control Association, and an adjunct professor at Georgetown University's Law Center and School of Foreign Service. He was a deputy legal adviser of the Department of State and served as legal adviser to the U.S. delegation that negotiated the Anti-Ballistic Missile ("ABM") Treaty.

1. Our views on this subject have developed as the Soviet Union was dissolving and arms control negotiators attempted to preserve what had been negotiated before dissolution. See John B. Rhineland and George Bunn, *Who's Bound by the Former Soviet Union's Arms Control Treaties?*, *Arms Control Today*, Dec. 1991, at 3 [hereinafter Rhineland & Bunn, ACT]; *The Strategic Arms Reduction Treaty: Hearings on S. 607 Before the Senate Comm. on Foreign Relations, Pt. 1, 102d Cong., 2d Sess. 301-19 (1992)* (testimony of George Bunn and John B. Rhineland) [hereinafter START Treaty Hearings]; George Bunn & John B. Rhineland, *Who Inherited the Former Soviet Union's Obligations under Arms Control Treaties with the United States?*, in *The Strategic Arms Reduction Treaty: Hearing before the Senate Comm. on Foreign Relations, 102d Cong., 2d Sess. 309-15 (1992)* [hereinafter Bunn-Rhineland Memorandum]. Because of the changes in Eastern Europe and the dissolution of the Soviet Union, the American Society of International Law devoted the opening of its 1992 annual meeting to questions of state succession. See *State Succession and Relations with Federal States*, 86 *Am. Soc'y Int'l L. Proc.* 1 (1992) [hereinafter ASIL Conference on State Succession].

2. The most comprehensive analysis and plan for international actions to deal with problems raised by the nuclear weapons in the former Soviet Union is Cooperative

place of the Soviet Union are its fifteen former republics, each of which declared its independence and was recognized by the United States. The largest of these new states is the Russian Federation ("Russia"), with roughly three-quarters of the territory and one-half of the population of the former Soviet Union. Russia now has on its territory all of the 16,000 short-range (tactical) and more than seventy percent of the 11,000 long-range (strategic) nuclear weapons that were deployed by the Soviet Union. The remaining strategic weapons are still deployed in Belarus, Kazakhstan and Ukraine and, presumably, are still targeted at the United States. The assembly and disassembly plants for nuclear weapons are also located in Russia, as are half or more of each category of the former Soviet Union's most threatening conventional weapons west of the Ural Mountains.³

Within days of the dissolution of the Soviet Union, Russia moved to assume Soviet arms control obligations. On January 13, 1992, the Russian Foreign Ministry circulated to foreign offices a diplomatic note requesting that "the Russian Federation be considered as the Party in all international treaties in force in place of the Union of

Denuclearization: From Pledges to Deeds, 2 CSIA Studies in International Security (Graham Allison et al. eds., 1993) [hereinafter Cooperative Denuclearization]. Estimates of the total number of nuclear weapons deployed by the Soviet Union before it dissolved vary between 27,000 and 30,000. We have used the lowest end of the range of estimates for this Article. The estimate of the potential for 90,000 nuclear bombs is from Ashton B. Carter & Owen Cote, Disposition of Fissile Materials, in Cooperative Denuclearization, *supra*, at 117 & 118 n.4. A chart analyzing the less than thirty percent of all former Soviet strategic nuclear weapons outside of Russia is in Thomas Bernauer et al., Strategic Arms Control and the NPT: Status and Implementation, in Cooperative Denuclearization, *supra*, at 26, 31. The lead in recognizing the new threat and proposing solutions, such as the Freedom for Russia and Emerging Eurasian Democracies and Open Market Support Act of 1992 (or FREEDOM Support Act), Pub. L. No. 102-511, 106 Stat. 3320 (1992), belongs to Senators Sam Nunn and Richard Lugar as well as then-Representative Les Aspin (now Secretary of Defense). See, e.g., CoDel Nunn-Lugar: Findings and Recommendations (Dec. 4, 1992) (trip report of Senators Sam Nunn (D-GA) and Richard Lugar (R-IN)) (on file with authors); U.S. Security Aid to Former Soviet Union, Arms Control Today, Dec. 1992, at 32.

3. START Treaty Hearings, *supra* note 1, at 6, 19 (testimony of Undersecretary of State Reginald Bartholomew); Lee Feinstein, Former Soviet States Agree on CFE Weapons Split, Arms Control Today, June 1992, at 20; Lee Feinstein, Weapons in Europe Before and After CFE, Arms Control Today, June 1992, at 32 [hereinafter Feinstein Chart]; Adrian Karatnycky, The Ukrainian Factor, Foreign Aff., Summer 1992, at 90, 95; Dunbar Lockwood, Ukraine to Join START and NPT; All Tactical Nukes Removed, Arms Control Today, May 1992, at 16; Robert S. Norris, The Soviet Nuclear Archipelago, Arms Control Today, Jan./Feb. 1992, at 24, 25; Nuclear Sites in the Former Soviet Union, Arms Control Today, Jan./Feb. 1992, at 28-29 (detailed map indicating nuclear weapons and related sites). The conventional weapons regarded as most threatening by the Treaty on Conventional Armed Forces in Europe [hereinafter CFE Treaty] are battle tanks, armored combat vehicles, artillery, combat aircraft and attack helicopters. See *infra* text accompanying notes 85-95.

Soviet Socialist Republics.”⁴ On January 29, 1992, Russian President Boris Yeltsin said:

Russia regards itself as the legal successor to the USSR in the field of responsibility for fulfilling international obligations. We confirm all obligations under bilateral and multi-lateral agreements in the field of arms limitations and disarmament which were signed by the Soviet Union and are in effect at present.⁵

Besides Russia, however, there are fourteen former republics of the Soviet Union—the most important being Belarus, Ukraine and Kazakhstan—that could be important for carrying out Soviet treaty obligations such as those to prevent the spread of nuclear weapons, to refrain from building strategic anti-ballistic missile systems, to reduce potentially threatening conventional weapons and to cut drastically the long-range missiles and bombers for nuclear weapons.⁶ Ukraine, for example, has the second largest army in continental Europe; its army is smaller than Russia’s but larger than Germany’s.⁷ Ukraine now has on its territory fifteen percent of the long-range missiles and bombers having nuclear weapons that were deployed by the Soviet Union (and would be the third largest nuclear-weapon state if it owned and controlled them), and one-fifth or more of each of the major categories of Soviet conventional weapons west of the Urals, and its nuclear-weapons intentions have become more uncertain with the passage of time.⁸ Kazakhstan has about thirteen percent of the strategic nuclear weapons but has none of the conventional weapons west of the Urals, and some observers believe Kazakhstan’s nuclear-weapons intentions are as uncertain as Ukraine’s.⁹ Belarus has less

4. Ministry of Foreign Affairs of the Russian Federation, Moscow, Jan. 13, 1992, No. 11/Vgp [hereinafter Russian Diplomatic Note].

5. President Boris Yeltsin’s Statement on Arms Control, TASS Newswire, Jan. 29, 1992, available in LEXIS, Europe Library, TASS File [hereinafter Yeltsin Statement].

6. See treaties cited and discussion *infra* part III.

7. Karatnycky, *supra* note 3, at 89. See generally Roman Szporluk, Independent Ukraine and Serhiy Holowaty, Ukraine: One Year of Independence, in Russia, Ukraine and the U.S. Response, The Aspin Institute, Twelfth Conference, Queenstown, Maryland, Jan. 9-14, 1993.

8. See Steven Erlanger, Ukraine and Arms Accords: Kiev Reluctant to Say ‘I Do,’ N.Y. Times, Mar. 31, 1993, at A1; Spurgeon M. Keeny, Jr., Ukraine: Partner or Pariah?, Arms Control Today, Nov. 1992, at 2; R. Jeffrey Smith, Officials See Shift in Ukraine’s Nuclear Position: Intelligence Estimate Deems Country as Likely as Not to Keep Ex-Soviet Atomic Arms, Wash. Post, Dec. 19, 1992, at A10. See also *infra* note 112.

9. Feinstein Chart, *supra* note 3, at 32. Most of Kazakhstan’s territory lies east of the Urals, outside the range of the CFE Treaty, discussed in Part III of this Article. Kazakhstan may be hiding behind Ukraine’s public reluctance to join START I and NPT. See memorandum of RAND Corporation defense policy analyst Rose Gottmoeller, Nuclear

than one percent of the long-range nuclear weapons and at least five percent of the conventional weapons.¹⁰ No other republic is believed to have nuclear weapons on its territory, but some have uranium mines, uranium refineries and large nuclear power reactors.¹¹ Armenia, Azerbaijan, Georgia and Moldova all possess some of the major Soviet conventional weapons west of the Urals.¹²

Russia was accepted by the other republics, members of the UN Security Council, and UN members generally as the successor to the Soviet Union's membership in the UN, including its power to veto decisions of the Security Council.¹³ This was done without amendment of the UN Charter provision specifying the Soviet Union as a permanent member. With the exception of Belarus and Ukraine, which were charter members of the UN, the other former republics had to apply for UN membership.¹⁴

Should the same solution be applied to the arms control treaties of the former Soviet Union? If so, the acceptance of Russia as the sole inheritor of these treaty obligations would not bind the other former republics to observe them. What guidance does international law provide in determining who succeeds to the treaty obligations of a large nation-state when it splits up? This Article will consider, first, the general rules of inheritance in such a case (Part II) and, second, what has happened so far in four concrete areas (Part III). It is important to note that the situation in the former Soviet Union is very fluid; many of the former republics are entering only their second year as independent nation-states. Further, the entire scene is clouded by ongoing events in Russia both constitutional and political, such as the conservatives' challenge to Yeltsin, and economic, as Russia struggles

Issues, Ukraine/Kazakhstan, Oct. 4-25, 1992 (trip report on nuclear issues in Ukraine and Kazakhstan) (on file with authors). See also *infra* note 112.

10. See Feinstein Chart, *supra* note 3, at 32.

11. See Nuclear Sites in the Former Soviet Union, *supra* note 3, at 28-29; William C. Potter, Nuclear Exports from the Former Soviet Union: What's New and What's True, *Arms Control Today*, Jan.-Feb. 1993, at 3; William C. Potter, Nuclear Profiles of The Soviet Successor States (Monterey Institute of International Studies) (May 1993).

12. Feinstein Chart, *supra* note 3, at 32.

13. Decision by the Council of Heads of State of the Commonwealth of Independent States, Dec. 21, 1991, reprinted in 31 I.L.M. 151 (1992); Bunn-Rhineland Memorandum, *supra* note 1, at 309.

14. See Armenia - Azerbaijan - Belarus - Kazakhstan - Kyrgyzstan - Moldova - Russian Federation-Tajikistan-Turkmenistan-Uzbekistan-Ukraine: Agreements Establishing the Commonwealth of Independent States, Dec. 8, 1991, reprinted in 31 I.L.M. 138 (1992). The practice of the United Nations since the partition of British India in 1947 has generally been to require new states that split off from a UN member to apply for UN membership. See *infra* text accompanying notes 31-45.

with the twin difficulties of falling production and runaway inflation as it moves hesitatingly toward a market economy.¹⁵

II. THE GENERAL RULES FOR STATE INHERITANCE OF TREATIES

Two seemingly inconsistent rules of international law have been advanced to deal with the problem of inheritance of treaties when a state breaks apart to form two or more new states: "continuity" and "clean slate." Under the continuity rule, usually applied to non-colonial separating states in a formerly unified territory, any treaty that was in force for the entire territory of the predecessor state is presumed to continue in force for each separating state.¹⁶ Under the clean slate rule, usually applied to dependent colonies that become independent, the new states may wipe their individual slates clean and choose whether or not to join treaties that were brought into force for their territories when they were under the predecessor state's colonial

15. Yeltsin and his critics in the Supreme Soviet had agreed to a referendum on a new constitution. See Serge Schmemmann, *Yeltsin Bargains With Congress, Reducing Pressure at the Meeting*, N.Y. Times, Dec. 13, 1992, at A1; *Russia: Hope Fades*, The Economist, Dec. 19, 1992, at 46. This was replaced by an April 25 referendum which Yeltsin won, but not so overwhelmingly to silence his critics. See Serge Schmemmann, *Russians Appear To Hand Yeltsin A Victory in Vote*, N.Y. Times, Apr. 26, 1993, at A1. The prospect that Russia might itself disintegrate over the next few years cannot be excluded. See Fred Hiatt, *On Brink of Promise—or Peril*, Wash. Post, Feb. 4, 1993, at A14; Peter Reddaway, *Russia Comes Apart*, N.Y. Times, Jan. 10, 1993, at E23. Not only is the future of Russia uncertain now, but it may not be clear for decades. See David K. Shipler, *Four Futures for Russia—New Coup? Civil War? Muddling Through? Happy Ending?*, N.Y. Times, April 4, 1993, Magazine, at 28, 48 ("These uneasy contradictions make muddling through probably the most likely scenario of all.").

16. "When a part or parts of the territory of a State separate to form one or more States . . . any treaty in force at the date of the succession of States in respect of the entire territory of the predecessor State continues in force in respect of each successor State so formed . . ." 1978 Vienna Convention on Succession of States in Respect of Treaties, U.N. Doc. A/Conf. 80/31, art. 34, reprinted in the U.N. Conference on Succession of States in Respect of Treaties, Aug. 22, 1978, 17 I.L.M. 1488 (1978) [hereinafter 1978 Convention]. This treaty does not have sufficient signatures to come into effect, but article 34 reflects what states regard as customary international law, according to an earlier view from the U.S. Department of State. See *infra* note 19 and accompanying text. Article 34 applies whether or not the predecessor state continues to exist. Article 35 announces essentially the same rule for the "remaining territory" if the predecessor state continues to exist and continues to govern this territory. If one takes the view that Russia is really the same state as the Soviet Union, with a change of name and government together with a reduction in territory and population, article 35 would produce the same result as article 34. That would be consistent with the practice of states on the occasion of British India's partition into India and Pakistan at the same time both became independent of Britain. See *infra* text accompanying notes 31-38. Rein Mullerson implicitly seems to apply article 35 to Russia. Rein Mullerson, *New Developments in the Former USSR and Yugoslavia*, 33 Va. J. Int'l L. 299, 302-08 (1993).

rule.¹⁷

Because the problem has come up most frequently in the period since World War II, during which many colonies achieved independence, there are more recent examples of state practice applying the clean slate rule than the continuity rule. As we shall see, however, there are examples of the application of the continuity rule both to former colonies and to separating parts of a more unified state. Further, it is not always easy to determine whether a seceding state had previously been in the dependent status of a colony.

Both the continuity and the clean slate rules appear in the 1978 Vienna Convention on Succession of States in Respect of Treaties (the "1978 Convention").¹⁸ This convention is not in force, but its succession rules were "generally regarded as declarative of existing customary international law" by the U.S. government.¹⁹ Under the 1978 Convention, the clean slate rule applied to a "newly independent state" whose territory was previously "dependent" in the sense that the predecessor state was responsible for the territory's international relations at the time the treaty was made applicable to it.²⁰ According to the president of the International Law Commission, which drafted both rules based on state practice at the time:

It could be presumed, as a general rule, that the population of a territory in colonial status was normally not in a position to play any part in the actual government as the metropolitan [colonial] Power and could not, therefore, be

17. "A newly independent State is not bound to maintain in force, or to become a party to, any treaty by reason only of the fact that at the date of the succession of States the treaty was in force in respect of the territory to which the succession of States relates." 1978 Convention, *supra* note 16, art. 16. The Restatement (Third) of the Foreign Relations Law of the United States § 210(3) (1987) [hereinafter Restatement] sees this as the general rule applicable to state succession whether the successor was a colony or not. We are critical of this conclusion, at least as applied to arms control treaties. See *infra* text accompanying note 50.

18. See *supra* notes 16-17; Matthew G. Maloney, Note, Succession of States in Respect of Treaties: The Vienna Convention of 1978, 19 Va. J. Int'l L. 885 (1979) (discussing background and negotiating history of the treaty).

19. 1980 Digest of United States Practice in International Law, at 1041 n.43 (quoting a memorandum of Roberts Owen, Legal Adviser of the State Department). The views of the Legal Adviser serving under President Bush were more circumspect. See ASIL Conference on State Succession, *supra* note 1, at 10 (remarks of Edwin D. Williamson, U.S. State Department Legal Adviser); Edwin D. Williamson & John E. Osborn, A U.S. Perspective on Treaty Succession and Related Issues in the Wake of the Breakup of the USSR and Yugoslavia, 33 Va. J. Int'l L. 261, 262-64 (1993).

20. "[N]ewly independent State' means a successor State the territory of which immediately before the date of the succession of States was a dependent territory for the international relations of which the predecessor State was responsible." 1978 Vienna Convention, *supra* note 16, art. 2(1)(f).

regarded as responsible for the conclusion of treaties and, consequently could not be bound by treaties to which it had not consented.²¹

As the U.S. Member of the Commission put it, “[p]revious colonial, trust, or protected territories emerge as accepted examples of dependencies” to which the clean slate rule applies.²²

The continuity rule, on the other hand, was for “cases of separation of parts of a State,” that is, “[w]hen a part or parts of the territory of a State separate to form one or more States.”²³ In such cases, the 1978 Convention presumes continuity of obligation for all parts of the territory of the predecessor state if the treaty had been in effect for its entire territory.²⁴ For “separation” of a unified state as distinct from secession of a former colony, the policy of stability of treaty relations thus outweighs the policy of self-determination represented by the clean slate rule.

During their participation in the deliberations that produced these statements of the two rules in the 1978 Convention, the U.S. delegation supported both rules but pointed out future problems of distinguishing between seceding former colonies and separating parts of a formerly unified state.²⁵ Instead of suggesting changes in the language governing which rule to apply, however, the U.S. representative urged the addition of provisions for resolving disputes over this and other problems of interpretation. Such provisions were added, but they and an unrelated provision were not in a form acceptable to the United States which, along with most other states, never joined the 1978 Convention.²⁶

The 1978 Convention suggests the applicability of the continuity rule for Russia, clearly the most important obligor for arms control treaties that had been negotiated with the Soviet Union. Russia was certainly not a colony, a dependent trust or mandated territory of the Soviet Union; the Soviet empire was ruled from Moscow, Russia’s

21. U.N. Doc. A/C.6/SR.1484, para. 22 (1974) (statement of Endre Ustor).

22. Richard D. Kearney, *The Twenty-Sixth Session of the International Law Commission*, 69 *Am. J. Int’l L.* 591, 601 (1975).

23. 1978 Convention, *supra* note 16, art. 34.

24. *Id.* art. 35.

25. See U.S. comments in 1974 *Digest of United States Practice in International Law*, at 219-34 and in 1975 *Digest of United States Practice in International Law*, at 272-91; Kearney, *supra* note 22, at 599-601; U.N. Conference on Succession of States in Respect of Treaties, U.N. Doc. A/CONF.80/16/Add.1, *Summ. Records, Comm. of the Whole*, vol. 2 at 58-59 (resumed sess., July 31-Aug. 23, 1978) (statement of U.S. Representative Arthur Rovine).

26. 1975 *Digest*, *supra* note 25, at 272-91; 1978 *Digest of United States Practice in International Law*, at 704-721.

capital, and Russia was the dominant republic. Although its territory and population are smaller than those of the former Soviet Union, Russia appears to be the continuing state to both the former Soviet Union and its predecessor, the Russian Empire of the Czars. If this is true, however, did Belarus, Kazakhstan, Ukraine and the other republics have the dependency of colonies?

The answer is probably no. The status of the other former Soviet republics was different from the former African, Asian and Caribbean dependencies of Belgium, Britain, France, Italy, the Netherlands and Portugal. Belarus and Ukraine, though part of the Soviet Union, were original members of the United Nations because of Stalin's insistence that the Soviet Union would otherwise be overwhelmingly outvoted by the West in the UN General Assembly.²⁷ Belarus and Ukraine were permitted by the Moscow authorities to join some treaties as separate states between 1945 and their independence in 1991.²⁸ Kazakhstan, the third non-Russian former republic with Soviet nuclear weapons on its territory, should probably be treated the same way to avoid discrimination among those three former republics. Indeed, we do not see reasons against applying the continuity rule to all the other republics except for the Baltic states (Estonia, Latvia and Lithuania). Although all the republics were subservient to Moscow, some of their nationals had the opportunity of going to Moscow to join the central government and Communist Party authorities who made decisions about foreign policy. Two Georgians are examples of those who took advantage of this opportunity—Stalin, the successor to Lenin, and Eduard Shevardnadze, who became foreign minister under Mikhail Gorbachev. In this respect, the non-Russian republics

27. Thomas M. Franck, *Nation Against Nation: What Happened to the U.N. Dream and What the U.S. Can Do About It* 21 (1985).

28. See, e.g., U.S. Arms Control and Disarmament Agency, *Arms Control and Disarmament Agreements* 48, 60, 138, 220 (1990) [hereinafter *ACD Agreements*]. In recording the accession of Belarus and Ukraine to arms control treaties, the United States noted: "The United States regards the signature and ratification by the Byelorussian S.S.R. [name as a Soviet republic] and the Ukrainian S.S.R. as already included under the signature and ratification of the Union of Soviet Socialist Republics." *Id.* at 459 n.2. Moreover, Belarus and Ukraine were not permitted by the Soviet Politburo to join the nuclear Non-Proliferation Treaty of July 1, 1968. For them to join as nuclear-weapon states would have been inconsistent with the purpose of the treaty to hold such states to five. See *infra* text accompanying notes 57-60. For them to join as non-nuclear-weapon states would have required placing all their nuclear facilities under international safeguards, which Moscow was not then prepared to accept. See Rhinelander & Bunn, *ACT*, *supra* note 1, at 4. Despite great limitations on their sovereignty as republics of the Soviet Union, the former republics had more to say about treaty decisions affecting them than did distant colonies or similar dependencies.

were decidedly different from most colonies.²⁹

The rule for the Baltic states need not, however, be the same as for the other twelve former republics. The United States and some other countries did not recognize the Baltic states' forcible incorporation into the Soviet Union during World War II. In this respect, they are different from the other former republics. Largely for this reason, the Bush Administration permitted them to wipe their slates clean and choose which treaties they wished to be bound by.³⁰

Among the best known, post-World War II succession cases which arose before the 1978 Convention were those of India, Pakistan and Bangladesh. India and Pakistan became independent of Great Britain on the same date in 1947, when the territory of British India (including what is now Pakistan and Bangladesh) was separated into the two new states, India and Pakistan. British India had been an original member of the United Nations as a state separate from Britain though dependent on it, and the United Nations had to decide whether both India and Pakistan succeeded to British India's UN membership. The UN Assistant Secretary-General for legal affairs declared that India would continue "as a State with all [the] treaty rights and obligations" of its predecessor British India, including those of UN membership; that Pakistan, the portion of British India "which breaks off," would be a new state and that "it will not have the treaty rights and obligations of the old State, and it will not, of course, have membership in the UN."³¹ The "remaining portion [present-day India] [would continue] as an existing State with all the rights and duties which it had before."³²

29. The reporters for the Restatement agree that the 1978 Convention's distinction between "newly independent" and "separated states" "was justified [by its drafters] on the basis that, unlike a separated state, the ex-colony had no voice in making the agreement." Restatement, supra note 17, § 210 reporters' note 4. They argue, however, that some "'dependent territories' such as the British dominions, had greater voice in making international agreements applicable to their territory than some 'separated states,' such as Bangladesh." *Id.* That is certainly true, and it makes the distinction difficult to apply. Within the former Soviet republics, there is similar variation. Nevertheless, one of the reasons we believe the continuity rule is appropriate for the republics, other than the Baltics, is because numerous party officials, diplomats and international lawyers from non-Russian republics went to Moscow long before the dissolution of the Soviet Union to participate in governmental or party activities.

30. Memorandum from Michelle Maynard & Edwin K. Hall (committee staff), *Successor States of the Former Soviet Union*, to Senate Comm. on Foreign Relations, pt. B (Feb. 20, 1992) (unpublished memorandum on file with the Foreign Relations Committee); Restatement, supra note 17, § 210 reporters' note 7.

31. 2 Whiteman Digest of International Law, at 800.

32. *Id.* See also Yehuda Z. Blum, U.N. Membership of the "New" Yugoslavia: Continuity or Break?, 86 Am. J. Int'l L. 830 (1992) (citing the case of India in 1947 and arguing that the continuity rule applies to Serbia and Montenegro with respect to their UN status).

India and Pakistan disagreed with the Assistant Secretary-General's general view of succession, although they agreed with his position on UN membership.³³ For other treaties, India and Pakistan accepted the continuity rule.³⁴ They agreed that British India's treaty rights and obligations "having . . . exclusive territorial application" to the new India or the new Pakistan would devolve upon them alone but that rights and obligations applying to both territories would devolve upon both and "if necessary be apportioned between the two."³⁵ Pakistan then applied and received UN membership.³⁶

The issue was then referred to the First Committee of the General Assembly, which agreed with the Assistant Secretary-General that India had succeeded to British India's UN membership.³⁷ The First Committee referred to the Sixth Committee the task of giving general guidance to the United Nations regarding the legal rules that would apply in the future to "States entering into international life through the division of a [UN] Member State."³⁸

In 1949, Pakistan's inheritance of British and British Indian rights to an agreed boundary with Afghanistan, the "Durand Line," became an issue. Britain took the view that "Pakistan is in international law the inheritor of the rights and duties of the old Government of India and of His Majesty's Government in the United Kingdom in these territories."³⁹ All of the governments represented at a 1956 meeting of the South East Asia Treaty Organization, including the United States, agreed.⁴⁰

Later, but before the 1978 Convention, a case arose in a U.S. federal court concerning whether India had inherited British obligations to the United States under an extradition treaty that Britain had extended to India before independence.⁴¹ The court relied on what it thought was a general practice of continuity of obligations and the acceptance by both the Indian and U.S. governments of continuing

33. 2 Whiteman Digest, *supra* note 31, at 801-02.

34. *Id.*

35. *Id.*

36. *Id.* at 802-03.

37. *Id.* ("[T]he extinction of the State . . . must be shown before its rights and obligations can be considered thereby to have ceased to exist.")

38. *Id.*

39. *Id.* at 952.

40. *Id.* Boundaries, however, are regarded as an exception to the clean slate rule. See 1978 Convention, *supra* note 16, art. 11; Restatement, *supra* note 17, § 210(4).

41. *Jhirad v. Ferrandina*, 355 F. Supp. 1155 (S.D.N.Y. 1973), connected case rev'd on other grounds, 486 F.2d 442 (2d Cir. 1973).

obligations under this treaty.⁴² It held that the treaty was in effect between the two countries,⁴³ and its decision has been followed by other U.S. courts.⁴⁴ The preference of U.S. courts for continuity of treaty relations seems undeniable.⁴⁵

On the other hand, most of the recent practice of developing countries that were colonies has followed the clean slate rule. For example, after its separation from India in 1947, Pakistan joined the Geneva Protocol of 1925, despite its earlier agreement with India that should have made the Protocol applicable to Pakistan as a result of British India's adherence to it in 1930.⁴⁶ Also, after the completion of the 1978 Convention, Bangladesh joined the Outer Space Treaty and the Biological Weapons Convention even though Pakistan had acceded to both of them while Bangladesh was part of Pakistan.⁴⁷ Even before the completion of the 1978 Convention, the U.S. executive branch generally accepted the clean slate rule for former colonies; the United States accepted the right of former colonies to choose their own treaties in, for example, Africa, the Caribbean, the former French Indochina, and Malaysia.⁴⁸

We conclude that, despite difficulty in distinguishing between secession of newly-independent former colonies and separation of formerly-unified regions that were not colonies, the substantive rules on continuity and clean slate in the 1978 Convention reflect the practice of the United States, and that the Convention's continuity rule should generally be followed by the United States for the former republics of

42. *Id.* at 1159, 1160.

43. *Id.* at 1155, 1159.

44. See, e.g., *Arnbjornsdottir-Mendler v. United States*, 721 F.2d 679, 682 (9th Cir. 1983) (continuity, after separation of Iceland from Denmark, of extradition treaty obligation of Iceland entered into when Denmark and Iceland were joined); *Sabatier v. Dabrowski*, 586 F.2d 866, 868 (1st Cir. 1978) (continuity, after separation from Britain, of extradition treaty obligation of Canada entered into by Britain for Canada). The *Jhirad* court relied upon *Ivancevic v. Artukovic*, 211 F.2d 565 (9th Cir. 1954), cert. denied, 348 U.S. 818 (1954), holding that an extradition treaty between the United States and the Kingdom of Serbia survived Serbia's joining with Croatia and others to create the Federal Republic of Yugoslavia—even though the territories were not identical. *Jhirad*, 355 F. Supp. at 1159.

45. In addition to the cases in the preceding note, see *Hanafin v. McCarthy*, 57 A.2d 148, 150 (N.H. 1948) (succession by the Irish Free State to treaty obligations dealing with inheritance of property entered into on behalf of its territory by Britain before independence). "Generally speaking, it is recognized that 'a state formed by the separation of one from another . . . succeeds to such treaty burdens of the parent state as are permanent and attached to the territory embraced in the new state.'" *Id.* (citation omitted).

46. ACD Agreements, *supra* note 28, at 18 (as ratified by most states, the Geneva Protocol bars the use of chemical and biological weapons in war).

47. *Id.* at 60, 62, 138, 140.

48. 2 *Whiteman Digest*, *supra* note 31, at 976-1002.

the Soviet Union (except for the Baltics), particularly with respect to nuclear arms control treaties.

The Restatement (Third) of the Foreign Relations Law of the United States would permit all of the former Soviet republics except Russia to pick and choose the treaties to which they wanted to adhere because of the great difficulty of deciding whether the republics were, before independence, more like colonies and therefore subject to the clean slate rule, or more like regions of a larger country and therefore subject to the continuity rule.⁴⁹ While we accept that the distinction is difficult to apply, we believe difficult cases are likely to be worked out through negotiations among the states concerned, such as those reported in Part III. Given the strong interest in the stability of treaties affecting international security, we are persuaded that the 1978 Convention's support for the continuity rule for separating states is well placed.⁵⁰

III. THE APPLICATION OF THE RULES OF INHERITANCE TO SOVIET ARMS CONTROL OBLIGATIONS

We turn now to examine what the practice of the parties to four important arms control treaties has been in the year following the dissolution of the Soviet Union.

A. *The Non-Proliferation Treaty ("NPT")*⁵¹

The NPT, signed in 1968, now has over 150 parties.⁵² It recognizes five nuclear-weapon states, all now parties: Britain, China, France, the Soviet Union and the United States.⁵³ These five have obligations not to transfer nuclear weapons or control over them to anyone and not to assist any non-nuclear-weapon state to manufacture or otherwise acquire them.⁵⁴ All the other NPT parties are non-nuclear-weapon states.⁵⁵ They have the converse obligation not to receive nuclear weapons from others and not to manufacture or otherwise acquire

49. Restatement, *supra* note 17, § 210(3) & reporters' note 4.

50. Professor James Crawford, holder of the international law chair at the University of Cambridge, concludes that the 1978 Convention's rules are, in fact, being followed. See ASIL Conference on State Succession, *supra* note 1, at 15, 16-17.

51. Treaty on the Non-Proliferation of Nuclear Weapons, July 1, 1968, 21 U.S.T. 483, 729 U.N.T.S. 161 [hereinafter NPT], reprinted in ACD Agreements, *supra* note 28, at 98, 106.

52. Existing Non-proliferation Efforts, White House Fact Sheet, Office of the Press Secretary, July 13, 1992, reprinted in 3 U.S. Dep't of State Dispatch 570 (1992) [hereinafter Fact Sheet I].

53. NPT, *supra* note 51, art. IX.3. See *infra* text accompanying notes 58-60.

54. NPT, *supra* note 51, art. I.

55. *Id.* art. II, IX.3.

them.⁵⁶

Consistent with the continuity rule and the position Russia took immediately after the dissolution of the Soviet Union, the United States accepted Russia as the successor nuclear-weapon state under the NPT.⁵⁷ As in the case of accepting Russia for the Soviet Union in the Security Council, this was done without any formal agreement or amendment of the NPT. In our judgment, this reflects the conclusion of both countries, and apparently the other NPT parties, that the continuity rule is sufficient to provide rights and obligations for Russia under this Soviet treaty.

Would similar application of the continuity rule to other former republics permit them to become nuclear-weapon state parties to the NPT just because the Soviet Union was a nuclear-weapon state party and the treaty had applied throughout Soviet territory? Such a result would mean each could control nuclear weapons, which would be wholly inconsistent with the purpose of the treaty. It was intended to hold the line at the five nations who had "manufactured and exploded a nuclear weapon or other nuclear explosive device prior to January 1, 1967."⁵⁸ The five nations were Britain, China, France, the Soviet Union and the United States.

The 1978 Convention contains an exception to the continuity rule if "it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty."⁵⁹ Clearly, this exception is applicable to succession to the NPT by republics other than Russia. To permit some or all of them to inherit Soviet rights to hold nuclear weapons under the NPT would defeat its basic purpose to limit nuclear-weapon states to five; it could even have a domino effect in producing more nuclear-weapon states. Our conclusion would mean that the non-Russian republics are within the non-nuclear-weapon state category of the NPT, and must join it in that capacity to become members. This is also the position that the United States has taken since the dissolution of the Soviet Union.⁶⁰

56. *Id.* art. II.

57. START Treaty Hearings, *supra* note 1, at 9, 14 (testimony of Undersecretary of State Reginald Bartholomew).

58. NPT, *supra* note 51, art. IX.3.

59. 1978 Convention, *supra* note 16, art. 34.2(b).

60. START Treaty Hearings, *supra* note 1, at 9-10, 14 (testimony of Bartholomew). Since Britain, Russia and the United States are NPT "depository governments" with one of whom new parties have to deposit their instruments of accession to the NPT, they can refuse to accept the deposit of such an instrument by a former Soviet republic acceding to the treaty as a

Consistent with this position, the three Baltic states and Uzbekistan have joined the NPT as non-nuclear-weapon states, and the leaders of Belarus, Kazakhstan and Ukraine promised to do so promptly in the Lisbon Protocol to the START I Treaty.⁶¹ The Belarus legislature has approved adherence to the NPT.⁶² Whether Kazakhstan and Ukraine will, in fact, live up to this commitment is one of the most important nuclear non-proliferation issues, and critical to the overall fate of nuclear arms control and reductions. We hope the seven other former republics will also join the NPT as non-nuclear-weapon states in the next year or so.

All of the Soviet tactical nuclear weapons have been returned to Russia.⁶³ Besides Russia, long-range missiles and bombers are deployed only in Belarus, Kazakhstan and Ukraine; removal of the last of these to Russia is promised by the year 2000 if the first Strategic Arms Reduction Talks treaty ("START I") goes into effect during 1993.⁶⁴ U.S. policy is to accelerate the dismantlement schedule to achieve completion earlier than treaty commitments, while agreeing to cover part of the large costs in the former Soviet Union with Congressionally-appropriated Nunn-Lugar funds.⁶⁵

Until all nuclear weapons are dismantled and transferred to Russian territory, questions will arise about control over those weapons in the other three republics. The initial agreements between the former republics contain provisions relating to joint control. As the Soviet Union was disintegrating, eleven former republics—all but the Baltic states and Georgia—formed a "Commonwealth of Independent States" and agreed that:

nuclear-weapon state. See NPT, *supra* note 51, art. IX.2. In our opinion, there is little doubt that all of them would reject such a deposit.

61. Fact Sheet I, *supra* note 52, at 570. For a discussion of the accessions of Belarus, Kazakhstan and Ukraine, see *infra* notes 110-114 and accompanying text. See also Keeny, *supra* note 8, at 2 ("Ukraine should be unequivocally disabused of any idea that delay might somehow improve its security[,] . . . delay contains the seeds of disaster.").

62. See Belarus Approves First Arms-Limitation Pact, *N.Y. Times*, Feb. 5, 1993, at A8.

63. See Dunbar Lockwood, U.S. Completes Announced Tactical Nuclear Withdrawal, *Arms Control Today*, July/Aug. 1992, at 27 ("In early [1992], Russian officials announced that all of the former Soviet Union's tactical nuclear weapons had been consolidated in Russia.").

64. *Id.* at 17.

65. See Dunbar Lockwood, Plans for U.S. Aid for Russian Warhead Dismantlement Detailed, *Arms Control Today*, July/Aug. 1992, at 27. For a discussion of the START I and START II treaties, see *infra* text accompanying notes 96-114. The expedited dismantlement of the nuclear weapons in the former Soviet Union and their safe transportation, storage and ultimate disposition are discussed in detail in *Cooperative Denuclearization*, *supra* note 2, including use of the \$800 million of Nunn-Lugar funds appropriated for these and related purposes.

Until the complete elimination of nuclear weapons, the decision on the need for their use is made by the President of the Russian Federation in agreement with the heads of State of the Republic of Belarus, the Republic of Kazakhstan and Ukraine, and in consultation with the heads of the other Member States of the Commonwealth.⁶⁶

As long as this means no more than veto control by republics other than Russia, no violation of the NPT's prohibition on transfer of control of nuclear weapons will have occurred.⁶⁷

Preventing joint affirmative control over nuclear weapons by a loose association of independent states was a goal of the NPT.⁶⁸ Ironically, it was the Soviet Union that had objected during the negotiations to a U.S. plan for a multilateral force of naval ships with intermediate-range nuclear missiles that were to be owned and controlled jointly by Germany, the United States and probably at least Britain and Italy.⁶⁹ Britain or the United States would have supplied the nuclear warheads and retained a veto over their use, at least until Western Europe was more unified, but the Soviet Union insisted that the plan be banned by the NPT.⁷⁰ As a result, the NPT bars Britain or France from transferring nuclear weapons to a European multilateral association (composed of Britain or France among others) until that association achieves enough unity to control "all its external security functions including defense and all foreign policy matters

66. Minsk Agreement on Strategic Forces, Dec. 31, 1991, art. 4, reprinted in *Arms Control Today*, Jan./Feb. 1992, at 39 [hereinafter *Minsk Agreement*]. The degree of commitment to the new Commonwealth of Independent States varies among the republics. Thus, in May 1992, six of them, not the full eleven Commonwealth members, joined together in a treaty of alliance modeled to a degree on the North Atlantic Treaty. Russia, Armenia and all the Central Asian republics but Turkmenistan joined the new alliance. The other Commonwealth members, Belarus and Ukraine as well as Azerbaijan and Moldova, did not join. Georgia and the Baltic states are not members of either the Commonwealth or the new alliance. Treaty on Commonwealth of Independent States Collective Security, May 15, 1992, *Foreign Broadcast Information Service*, Eurasia, May 26, 1992, at 8 (translated from *Rossiyskaya Gazeta*, May 23, 1992 (1st ed.), at 2).

67. See NPT, *supra* note 51, art. I; Rhineland & Bunn, *ACT*, *supra* note 1, at 4. However, Ukrainian officials now talk of "administrative control" over the nuclear weapons on their territory, and the U.S. intelligence community is reported to have concluded that Ukraine is now more likely than a year ago to hold onto some if not all of the nuclear weapons on its territory, and may be seeking "operational control." See Smith, *supra* note 8. See also Serge Schmemmann, *Ukraine Finds Nuclear Arms Bring a Measure of Respect*, *N.Y. Times*, Jan. 7, 1993, at A1 (Ukraine will ratify the START Treaty only upon receiving "international guarantees of Ukraine's security and satisfactory compensation.").

68. For the history of this part of the NPT negotiation, see George Bunn, *Arms Control by Committee: Managing Negotiations With the Russians* 66-72, 75-80 (1992).

69. *Id.* at 64.

70. *Id.* at 64, 66-72, 75-80.

related to external security”—though it would not “have to be so centralized as to assume all governmental functions.”⁷¹ If the required degree of unity occurred, the association would become a new nation-state that would inherit Britain’s or France’s rights and obligations under the NPT as a nuclear-weapon state.

The Commonwealth of Independent States does not meet this test. It is a loose association, not a state with its own national security policy. Some of the former republics may one day come together again sufficiently to form a state. But, in 1992, the Commonwealth could not have succeeded to the Soviet status as a nuclear-weapon state under the NPT. Russia did so and now has an NPT obligation not to transfer ownership or control over the nuclear weapons of the former Soviet Union to a Commonwealth council where decisions to use nuclear weapons are made by a majority, even a large majority.⁷² Under the treaty, Russia has a clear obligation to prevent any of the former Soviet republics from exercising affirmative control over, or ownership of, any Soviet nuclear weapons on their territories, and it may not permit them to acquire nuclear material from these weapons unless that material is placed under international safeguards.⁷³

Russia thus has an obligation to prevent, for example, Ukrainian troops from taking over Soviet weapons on Ukrainian soil by force from Russian or Commonwealth troops. On the other hand, permitting a veto by Ukraine over the firing of weapons in Ukrainian territory would be consistent with U.S. deployment arrangements that existed in non-nuclear NATO countries when the NPT was negotiated. These arrangements were permitted by the NPT’s terms.⁷⁴ Thus, deployment of former Soviet long-range nuclear weapons in Belarus, Kazakhstan or Ukraine does not violate the NPT so long as Russia retains affirmative control and the others can only prevent the firing of the weapons, not vote affirmatively to use them.

B. *The Anti-Ballistic Missile Treaty (“ABM Treaty”)*

This 1972 U.S.-Soviet treaty, as amended in 1974, limits each country to one site in which to deploy not more than 100 fixed ground-

71. This quotation is from a U.S. interpretation of the NPT and state succession rules given officially to U.S. allies, the Soviet Union and the Senate during and after the NPT negotiations. See, e.g., *Nonproliferation Treaty: Hearings Before the Senate Comm. on Foreign Relations, 90th Cong., 2d Sess. 5-6, 51-52 (1968)* (testimony of Secretary of State Dean Rusk); Bunn, *supra* note 68, at 69.

72. NPT, *supra* note 51, art. I.

73. *Id.*

74. Bunn, *supra* note 68, at 76, 78, 80.

based anti-ballistic missile launchers to defend against incoming long-range missiles.⁷⁵ It prohibits deployment as well as development and testing of space-based, air-based or other mobile ABM systems and components.⁷⁶

The Russian statements asserting succession to Soviet rights and obligations—quoted at the outset of this Article—are broad enough to include the ABM Treaty. Indeed, later in President Yeltsin's statement mentioned above, he reiterated Russia's "allegiance to the Anti-Ballistic Missile Treaty."⁷⁷

Under the continuity rule, because the treaty applies to all former Soviet territory, are all of the former republics bound by its terms? Exceptions to continuity under the 1978 Convention would occur if succession were incompatible with the object and purpose of the treaty, if it radically changed the conditions for its operation, or if the United States did not agree to succession.⁷⁸

Secretary of State James Baker, at a press conference on January 29, 1992 after meeting with Russian President Yeltsin, said:

I made the point to President Yeltsin that the United States remains committed to the ABM Treaty. . . . [T]he fact of the matter is, we've made the point that we expect the states of the Commonwealth to abide by all of the international treaties and obligations that were entered into by the former Soviet Union, including the ABM Treaty.⁷⁹

If each of the former Soviet republics—including all the "states of the Commonwealth" in Secretary Baker's words—succeeded to all Soviet rights under the ABM treaty, each might theoretically claim the right to build 100 launchers for an ABM system around its capital. (There is already one around Moscow equipped with short- and longer-range nuclear-armed ABM missiles.) That would clearly be inconsistent with the purpose of the ABM Treaty, as amended in 1974, to limit ABM systems to one small, regional system on each side. Unless the ABM Treaty were formally amended, to permit each

75. Treaty on the Limitation of Anti-Ballistic Missile Systems, May 26, 1972, art. III, 23 U.S.T. 3435, 944 U.N.T.S. 13, reprinted in ACD Agreements, *supra* note 28, at 157 [hereinafter ABM Treaty]; Protocol to the Treaty on the Limitation of Anti-Ballistic Missile Systems, July 3, 1974, art. I, 27 U.S.T. 1645, reprinted in ACD Agreements, *supra* note 28, at 182.

76. ABM Treaty, *supra* note 75, art. V.1.

77. See Russian Diplomatic Note, *supra* note 4 and accompanying text; Yeltsin Statement, *supra* note 5.

78. 1978 Convention, *supra* note 16, art. 34.2(b).

79. Bunn-Rhineland Memorandum, *supra* note 1, at 314.

republic to have an ABM system would change the basic bargain of the ABM Treaty as much as permitting each to become a nuclear-weapon state would change the NPT. Nevertheless, as in the case of each of the other three arms control treaties discussed in this Article, further negotiations between the United States and the pertinent former republics will be necessary.⁸⁰

At the Commonwealth of Independent States summit at Bishkek on October 9, 1992, ten of the Commonwealth members, including Ukraine, stated they "will implement the terms" of the ABM Treaty "as applied to their territories and in consideration of the national security interests of each of them."⁸¹ The simplest way of doing this might have been to treat Russia as the primary successor to the Soviet Union and ask it to work out whatever implementation steps are necessary with other former republics concerning the ABM Treaty. This method, however, did not work for the START I treaty, for the reasons discussed below.⁸² An alternative that is suggested by the Bishkek resolution is the method used for START I: a multilateral agreement between the United States and all of the relevant former republics with either treaty-limited facilities on their territories or with the possibility of building defensive missile systems.

One of the tasks of the Clinton Administration will be to negotiate with Russia, and other republics as necessary, on the successor state issues that arise under the ABM Treaty.⁸³ At the same time, the Administration will need to clarify a number of issues that have been left unresolved for the past twenty years.⁸⁴

80. Several of the non-Russian former republics have ABM Treaty-limited facilities, such as early warning radars and an ABM test range, on their territories. See Nuclear Sites in the Former Soviet Union, *supra* note 3.

81. Resolution on the Participation of Member States of the Commonwealth of Independent States in the Treaty Between the Union of Soviet Socialist Republics and the United States of America on the Limitation of Anti-Missile Defense Systems, para. 1, Oct. 9, 1992 (unofficial English translation on file with authors). We do not read this resolution to suggest that each successor state to the Soviet Union is entitled to build an ABM system around its capital.

82. See *infra* text accompanying notes 109-111. The Bush Administration never took a position on whether the ABM Treaty should remain bilateral. Further, Ukraine sent a delegation to the November 1992 meeting of the Standing Consultative Commission [hereinafter SCC] established under the ABM Treaty. Such meetings had previously been bilateral and held in secret. See Standing Consultative Commission Addresses Arms Treaty Issues, *Arms Control Today*, Jan./Feb. 1993, at 25.

83. Three basic options to clarify and update the ABM Treaty are discussed in detail in Albert Carnesale, *Managing the ABM Treaty Regime: Issues and Options*, in *Defending Deterrence: Managing the ABM Treaty Regime into the 21st Century* 217, 233-36 (Antonia H. Chayes & Paul Doty eds., 1989).

84. Some of these issues are discussed *id.* at 217-38.

C. *Treaty on Conventional Armed Forces in Europe* ("CFE Treaty")

Beginning in 1989, this multilateral treaty was negotiated between the members of NATO and the members of the former Warsaw Pact to reduce the threat posed to either side (but particularly that perceived by NATO) by a conventional attack from the other.⁸⁵ The treaty was signed by the Soviet Union and others in 1990 before the Soviet Union disintegrated. It provisionally entered into force on July 17, 1992.⁸⁶ The CFE Treaty will reduce the conventional weapons giving the greatest potential for "conducting surprise attack or for initiating large-scale offensive operations."⁸⁷ These are battle tanks, armored combat vehicles, artillery, combat aircraft and attack helicopters.⁸⁸

The Minsk Agreement's provision "to observe the international treaties of the USSR and to pursue a coordinated policy in the area of international security, disarmament and arms control"⁸⁹ should probably be read to include the CFE Treaty which had been signed but not ratified by the Soviet Union when it dissolved. In an arms control statement on January 29, 1992, Russian President Yeltsin said: "the Treaty on Conventional Armed Forces in Europe was submitted for ratification by the Russian Parliament. Other member states of the Commonwealth of Independent States, whose territory comes under this treaty, also attach significance to its ratification."⁹⁰

Because the CFE Treaty had not been ratified by the Soviet Union before its disintegration, the continuity rule was not applicable.⁹¹ But eight former republics having territory west of the Urals covered by the CFE Treaty were nevertheless interested in continuing it. In negotiations among them (Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Moldova, Russia, Ukraine), the principal sticking point was dividing up the Soviet quotas within each category of weapon.⁹²

85. Treaty on Conventional Armed Forces in Europe, Nov. 19, 1990, reprinted in 30 I.L.M. 1 (1991) [hereinafter CFE Treaty].

86. Conventional Arms Pact Fully Ratified, Arms Control Today, Dec. 1992, at 30.

87. CFE Treaty and CFE-1A Agreement, White House Fact Sheet, Office of the Press Secretary, July 10, 1992, reprinted in 3 U.S. Dep't of State Dispatch 560 (1992) [hereinafter Fact Sheet II].

88. Id.

89. See Minsk Agreement, supra note 66, art. 2.

90. Yeltsin Statement, supra note 5.

91. Under art. 34.1 of the 1978 Convention, the treaty must be "in force at the date of succession" in order for the continuity rule to apply. 1978 Convention, supra note 16, art. 34.1.

92. The Baltic states were excused from participating because the only weapons on their

On June 5, 1992, having divided up those quotas, all eight former Soviet republics agreed to ratify the CFE Treaty,⁹³ and entered into an implementation agreement with the twenty-one other state parties to the treaty.⁹⁴ This agreement appears to treat all of the former republics equally; although Russia had many more weapons covered by the treaty, other former republics had significant amounts and an agreement between them and all non-Soviet parties made sense. By early July, all non-Soviet state parties had ratified the treaty. The parties agreed on the provisional application of essentially all of the treaty on July 17, 1992 pending ratification by Armenia and Belarus, with the latter finally acting on October 30, 1992.⁹⁵

D. *The Strategic Arms Reduction Talks (START) Treaties*

The two unratified START treaties—now known informally as START I and START II—are the end product of some twenty-five years of U.S.-Soviet efforts to deal with strategic ballistic missile and heavy bomber carriers for nuclear weapons capable of bringing vast destruction over long distances. If both treaties are ratified and then implemented over the next seven to ten years or earlier, they will reduce by about 17,000 the estimated deployed strategic warheads as of September 1991: from approximately 11,000 to 3,000 for the Soviet Union (now Russia) and from approximately 12,500 to 3,500 for the United States.⁹⁶

territories that fit the categories of the CFE Treaty were held by Soviet troops who were to return to Russia, and Russia agreed to be charged with the weapons under the Treaty. Feinstein, *supra* note 3, at 20.

93. *Id.*

94. Final Document of the Extraordinary Conference of the State Parties to the Treaty on Conventional Armed Forces in Europe, July 10, 1992 (on file with authors).

95. The "legally correct" date of entry into force is November 9, 1992, but the date for which reporting, destruction and other deadlines are calculated remains July 17, 1992. See Conventional Arms Pact Fully Ratified, *Arms Control Today*, Dec. 1992, at 30. See also Fact Sheet II, *supra* note 87, at 560-61. Armenia ratified soon after the provisional entry into force, but the legislature of Belarus did not convene until the fall of 1992. The U.S. Senate had acquiesced in the provisional entry into force of the CFE Treaty in July, notwithstanding the explicit condition in the treaty that ratification by all parties was a condition precedent to the effectiveness of the treaty. See exchange of letters between Ronald F. Lehman, II, Director, Arms Control and Disarmament Agency, and Senators Claiborne Pell, Chairman of the Senate Comm. on Foreign Relations, and Richard G. Lugar, acting ranking minority member, July 7, 1992 (on file with authors). See also CFE Treaty, *supra* note 85, art. XXII(2).

96. See Past and Projected Strategic Nuclear Forces, *Arms Control Today*, July/Aug. 1992, at 35. The first U.S. proposal for a treaty specifically to freeze the levels of long-range ballistic missile and bomber carriers of nuclear weapons was made in 1964. Serious U.S.-Soviet exploration of the possibilities for such an agreement began in 1968. Negotiations began in 1969. See Bunn, *supra* note 68, at 107-16.

The first agreement on strategic offensive nuclear weapons, the Interim Offensive Agreement of 1972, was a limited freeze on further deployments of ballistic missile launchers, but not bombers.⁹⁷ It expired in 1977.⁹⁸ It was often referred to as the first Strategic Arms Limitation Talks, or the SALT I, agreement. SALT II, signed in 1979, was the second and a more comprehensive freeze: it added limitations on heavy bombers and required small reductions in aggregate strategic nuclear delivery vehicles.⁹⁹ SALT II was, however, never ratified by the United States. Even though it was favorably reported out of the Senate Foreign Relations Committee, it was never submitted to a vote on the Senate floor after the Soviets invaded Afghanistan.¹⁰⁰

The third agreement is the START I treaty.¹⁰¹ It is extraordinarily detailed and provides for intrusive data exchanges and on-site inspections. START I, signed by Presidents Bush and Gorbachev in Moscow on July 31, 1991, shortly before the August coup against the Soviet central government accelerated the disintegration of the Soviet Union, requires cuts of about thirty-five percent on each side in the nuclear warheads on deployed long-range ballistic missiles and long-range heavy bombers, to 6,000 "accountable" strategic nuclear warheads at the end of seven years.¹⁰² The treaty's basic objective is

97. Interim Agreement on Certain Measures with respect to the Limitation of Strategic Arms, May 26, 1972 [hereinafter SALT I], reprinted in ACD Agreements, *supra* note 28, at 169.

98. *Id.* By its terms, this agreement expired on October 3, 1977, but the Soviet Union and the United States continued to observe its terms for nearly a decade thereafter. See Bunn, *supra* note 68, at 230 & 230 n.40. The scope of the Interim Offensive Agreement is analyzed in John B. Rhinelander, *The Salt I Agreements*, in *SALT: The Moscow Agreements and Beyond* 142-53 (Mason Willrich & John B. Rhinelander eds., 1974).

99. Treaty on the Limitation of Strategic Offensive Arms, June 18, 1979, U.S.-U.S.S.R. [hereinafter SALT II], reprinted in ACD Agreements, *supra* note 28, at 267.

100. See generally John B. Rhinelander, *Arms Control in the Nuclear Age*, in *National Security Law* 551, 621 (John Norton Moore et al. eds., 1990); S. Rep. No. 14, 96th Cong., 1st Sess. (1979). Both the United States and the Soviet Union observed the terms of this treaty for over five years even though it never entered into force. See Bunn, *supra* note 68, at 132-141, 230 n.40.

101. Treaty on the Reduction and Limitation of Strategic Arms, U.S.-U.S.S.R., July 31, 1991 [hereinafter START I]. See Special Supplement, *Strategic Arms Reduction Treaty (START)*, *Arms Control Today*, Nov. 1991 [hereinafter Special Supplement]. One knowledgeable observer charges the Bush Administration with "running up the score in our favor in START I," weakening the reform factions, particularly Foreign Minister Eduard Shevardnadze, in the process. Strobe Talbott, *Crisis or Kiosks in the Former Soviet Union*, *Arms Control Today*, Dec. 1992, at 15, 17.

102. See Special Supplement, *supra* note 101, at 2-3. Although START I limits deployed nuclear warheads and ballistic missiles, it does not require the destruction of either (except missiles for mobile launchers); only the excess missile launchers or silos, the launch tubes on submarines, and the bombers are required to be destroyed. Further, START I permits each

achieved through the dismantlement of launchers, launch tubes, and heavy bombers. The treaty's status after the disintegration was not unlike that of the CFE Treaty—signed but not ratified and therefore not in effect.

The fourth agreement is the START II Treaty, signed by Presidents Bush and Yeltsin on January 3, 1993.¹⁰³ It reduces the aggregates on each side to no more than 3,000-3,500 by the year 2003, or by the year 2000 if the United States agrees to pay part of the Russian costs.¹⁰⁴ START II requires the destruction of launchers for all land-based, multiple independently targetable re-entry vehicles ("MIRVs") on intercontinental ballistic missiles ("ICBMs"), and also the destruction of the "heavy" SS-18 Soviet MIRVed ICBMs themselves and their canisters.¹⁰⁵ The latter have been a principal concern of the United States since the early 1970s. START II will reduce deployed U.S. strategic weapons to aggregates first reached in 1962, and Russian strategic weapons to Soviet aggregates reached in the mid-1970s.¹⁰⁶

As stated earlier, the three non-Russian republics with Soviet strategic arms on their territory are Belarus, Kazakhstan and Ukraine. In a declaration signed at Alma-Ata, Kazakhstan, in December 1991, these former republics agreed with Russia that the strategic arms deployed on their territories were to insure the "collective security of all participants in the Commonwealth of Independent States," and that each of the four would submit the START I treaty to its parliament.¹⁰⁷ Yeltsin's statement of January 29, 1992 says: "The treaty on strategic offensive armaments has been submitted for ratification to the Parliament of the Russian Federation. . . . In my opinion, this key

side to exceed 6,000 deployed warheads on strategic systems since the treaty purposely undercounts certain types of weapons, such as bombs on heavy bombers. As discussed *infra* text accompanying notes 103-106, the subsequent START II treaty lowers the aggregate limits, applies them to the number of nuclear warheads actually deployed, and requires the destruction of *all* the missiles and canisters for the Soviet SS-18 "heavy" missile. In addition, START I and START II, together, require the destruction of *most* of the launchers for the SS-18s, and any remaining SS-18 silo launchers must be partially filled with cement. Compare Special Supplement, *supra* note 101, with Special Supplement, START II Analysis - Summary - Text, *Arms Control Today*, Jan./Feb. 1993 [hereinafter Special Supplement, START II].

103. Ann Devroy, *Bush, Yeltsin Sign Treaty to Reduce Nuclear Arsenals*, *Wash. Post*, Jan. 4, 1993, at A1.

104. See Special Supplement, START II, *supra* note 102; Serge Schmemmann, *Bush and Yeltsin Sign Pact Making Deep Missile Cuts*, *N.Y. Times*, Jan. 4, 1993, at A8.

105. Dunbar Lockwood, *Strategic Nuclear Forces Under START II*, *Arms Control Today*, Dec. 1992, at 10.

106. Devroy, *supra* note 103, at A18.

107. *Agreement on Joint Measures with Respect to Nuclear Weapons*, Dec. 21, 1991, Belarus, Kazakhstan, Russia, and Ukraine, arts. 1, 7, reprinted in 31 *I.L.M.* 152 (1992).

document should be put into effect as soon as possible, including its approval by Belarus, Kazakhstan and Ukraine."¹⁰⁸

The states involved considered two ways to accomplish this goal. The first was through a new agreement among them covering what each would do with the strategic weapons on their territories. This agreement was to have recited that Russia succeeded the Soviet Union as the principal obligor to the START I treaty, but that the other three former republics would observe and implement it as it applied to their territories. Russia alone would have entered into a supplementary agreement with the United States containing technical amendments to the START I treaty and would have exchanged instruments of ratification with the United States.¹⁰⁹ The United States would have looked to Russia as the principal successor to the Soviet Union for START I just as Russia is the nuclear-weapon state under the NPT. This method would have contrasted with that used to implement the CFE treaty, where the supplementary agreement gives all republics the same status.

The proposed approach for START I was not satisfactory to Ukraine, in particular, which did not want to play second fiddle to Russia, at least in this central relation with the United States. The result was the Lisbon Protocol, a new five-party agreement among the four former Soviet republics and the United States that amended START I. It provides that Belarus, Kazakhstan, Russia and Ukraine, "as successor states of the former Union of Soviet Socialist Republics in connection with the [START I] treaty, shall assume the obligations of the former Union of Soviet Socialist Republics under the Treaty."¹¹⁰

The "successor states" language in the Protocol recognizes equal status for all four former republics as well as continuity of Soviet obligations. Other provisions, with one exception, seem also to apply equally to all four. These have to do with making arrangements for inspections and creating a multilateral forum for resolution of inspection and compliance disputes. The one exception is an article obligating Belarus, Kazakhstan and Ukraine, but not Russia, to:

adhere to the Treaty on the Non-Proliferation of Nuclear Weapons of July 1, 1968, as *non-nuclear-weapon* states in

108. Yeltsin Statement, *supra* note 5.

109. START Treaty Hearings, *supra* note 1, at 315-16 (testimony of John B. Rhineland).

110. Protocol to the Treaty Between the United States of America and the Union of Soviet Socialist Republics On the Reduction and Limitation of Strategic Offensive Arms, May 23, 1992, reprinted in *Arms Control Today*, June 1992, at 34.

the shortest possible time, and . . . [to] begin immediately to take all necessary actions to this end in accordance with their constitutional practices [*i.e.*, to gain approval of this step by their parliamentary bodies].¹¹¹

At Lisbon in May 1992, representatives of Belarus, Kazakhstan and Ukraine delivered letters addressed to President Bush promising the elimination of all strategic offensive arms from their territories by the end of the seven-year period of the START I treaty, but because of delays in ratification by Ukraine, START I will not enter into force before the fall of 1993 at the earliest.¹¹²

111. *Id.* art. V (emphasis added).

112. See Select Documents from the Lisbon ministerial meeting on May 23, *Arms Control Today*, June 1992, at 35-36. In July 1992, Kazakhstan's legislature approved START I, but did not vote on NPT adherence. On October 1, 1992 the Senate gave its advice and consent to START I, as did the Russian Supreme Soviet on November 4, 1992, the latter adding the condition that Belarus, Kazakhstan and Ukraine had to adhere to the NPT before START I entered its force. See Dunbar Lockwood, *Russia Ratifies START; Ukraine Reaffirms Conditions for Approval*, *Arms Control Today*, Nov. 1992, at 26. The Belarus legislature approved START I and the NPT on February 4, 1993. See Dunbar Lockwood, *Belarus Ratifies START I Pact; Ukraine Remains Last Holdout*, *Arms Control Today*, Mar. 1993, at 20. Ukraine is not expected to schedule votes on START I and the NPT before the fall of 1993 at the earliest, and may approve START I while postponing the NPT. This would delay or prevent START I from entering into effect.

Based on our research and our own discussions with foreign relations officials from Belarus, Kazakhstan and Ukraine, we believe that Kazakhstan will remove the remaining nuclear weapons from its soil if Ukraine does so. If, however, the Ukrainian parliament balks at ratifying the START treaty and adhering to the NPT, Kazakhstan might delay acceding to the NPT. Some Ukrainian officials have taken the position that it is already a nuclear-weapon state under the NPT because it, along with Russia (and perhaps Kazakhstan, Belarus and some other former Soviet republics), succeeded to the nuclear-weapon status of the Soviet Union and owns the weapons on its territory. See, e.g., Embassy of Ukraine to the United States, Press Release 48/1992 (Nov. 10, 1992). Our analysis to the contrary appears *supra* text accompanying notes 58-60. If Ukraine owns the nuclear weapons on its territory, argue some Ukrainian officials, it is not obligated by the START treaty or the Lisbon Protocol to return the nuclear materials in these weapons to Russia or any other country.

In January 1993, Ukraine deposited an instrument of ratification to the Vienna Convention on Succession of States in Respect of State Property, Archives and Debts, reprinted in 22 I.L.M. 306-09 (1983), apparently because that Convention suggests various rules for dealing with the property of a predecessor state situated on the territory of successor states after separation. *Id.* arts. 17-18. However, this Convention has been rejected by Western states—after a decade, only Estonia and Ukraine have ratified it. It is inapplicable to events taking place before it goes into effect if it ever does, and it could certainly not override the terms of the NPT. See *supra* part III(A) of this Article; Michael B. Akehurst, *A Modern Introduction to International Law* 166 (1987). International practice with respect to inheritance of state property by successor states often gives successors much of the property, but it varies; typically, there is a negotiation between the predecessor (if one remains) and the successor, and some agreement is reached dividing up the various kinds of property. When Pakistan separated from India, a great deal of equipment, including weapons, on Pakistani territory was turned over to India by agreement between the two; India undertook to pay Pakistan money to

At the Washington summit meeting between Presidents Bush and Yeltsin in June 1992, the outline of a START II treaty was announced.¹¹³ The treaty, signed in Moscow seven months later, is dramatically shorter than its immediate predecessor. It is a bilateral treaty, based on the assumption that all former Soviet strategic weapons are in the process of being transferred back to Russia, and therefore the additional reductions apply only to Russia and the United States. START II is subject to ratification. While the Senate is expected to give its advice and consent to START II by an overwhelming vote, conditioned on START I having been entered into and remaining in force, the outcome in Russia is far from clear, both because of the perception by some Russians that Yeltsin conceded too much and because Ukraine has not yet ratified START I.¹¹⁴

help Pakistan construct its own munitions factories. [1981] 2 Y.B. Int'l L. Comm'n pt. 2, at 46.

Some in Ukraine see Ukraine's importance in the world as directly related to whether it is perceived as a nuclear-weapon power or not. Ukrainian officials who support removal of nuclear weapons there, including President Leonid M. Kravchuk, have suggested that the Ukrainian parliament attach several conditions to its consent to the ratification of START I and the Lisbon Protocol, and to the ultimate dismantlement of the weapons, including receipt of satisfactory assurances from Russia and the United States (and perhaps Britain, France and China as well) that: (1) Ukraine will be secure from nuclear attack or conventional invasion without nuclear weapons; (2) Ukraine will be compensated for the value of the nuclear materials in the weapons (if the materials are given up) and for the costs of implementing weapon dismantlement; (3) Ukraine will receive technical and financial assistance in dealing with the environmental consequences of the destruction of the missiles; and (4) the nuclear materials from the weapons will not be used to make new nuclear weapons. See, e.g., Schmemmann, *supra* note 104; trip report of George Bunn, trip to Belarus and Ukraine, Oct. 21, 1992, and trip report of James Leonard, John Rhineland and Ralph Earle, *Travel to Minsk, Kiev and Moscow*, Nov. 17, 1992 (unpublished manuscripts on file with authors); trip report of Rose Gottemoeller, *supra* note 9. Various negotiations on Ukraine's nuclear status with Russia, Britain, Germany and other European Community members, as well as the United States, were conducted by Ukraine throughout much of 1992 and early 1993. The ultimate outcome may not be known for some years since, under the START I approach, the nuclear weapons must be removed from Ukraine only by the end of the seven-year reduction period.

113. The Bush-Yeltsin Summit: Bringing Reality to the Nuclear Balance, *Arms Control Today*, July/Aug. 1992, at 18.

114. The Russian situation is further confused by the inconclusive results of the referendum in April 1993, possible revisions to the present constitution, and possible early elections in the fall of 1993. See *supra* note 15. It is not clear whether Yeltsin will seek early approval of START II by the present Supreme Soviet, or await the outcome of new elections. But opposition to START II appears strong in the Supreme Soviet. See *A Persistently Nuclear Nightmare*, *The Economist*, April 3-9, 1993, at 52 ("Sergei Stepashin, the head of parliament's defense and security committee, describes the first hearings on the treaty as 'somewhat one-sided' (translation: everyone opposed it)."). The Ukrainian factor might lead Russia to delay its vote on START II until Ukraine has voted favorably on START I, which may not occur very soon, if at all. *Id.* ("Within weeks, Ukraine will formally proclaim its ownership of nuclear weapons . . ."). Delay, however, could see schism or autocracy in Russia. See Reddaway, *supra* note 15.

IV. CONCLUSION

In dealing with succession to Soviet arms obligations under the NPT and the ABM treaties, the practice of the former Soviet republics and the United States has been consistent with the continuity rule for all the republics except the Baltics, which are a special case. For the CFE and START I treaties, neither the continuity nor the clean slate rule was directly applicable because the treaties had been signed but not ratified when the Soviet Union dissolved. However, under customary practice reflected by the 1969 Vienna Convention on the Law of Treaties, the Soviet Union, had it not disintegrated, would have been obligated to "refrain from acts which would defeat the object and purpose" of the CFE and START I treaties until it had either ratified them or had made its intention clear not to do so.¹¹⁵ Did the former Soviet republics succeed to this obligation?

The continuity policy of the 1978 Convention would argue that they should. The former republics' practice in dealing with CFE and START I during 1992 and early 1993 was consistent with this conclusion. Continuity would not mean that the former republics were bound by an unratified Soviet treaty covering their territory, only that they would be obligated not to undercut it until they decided whether or not they wanted to join it. An interpretation of continuity such as this, which maintains the *status quo* pending a decision, can help to prevent hasty action adverse to continuity when difficulties could be worked out through negotiations among the concerned parties. In the actual practice described in this Article, Russia, the other former Soviet republics concerned with particular treaties, Central European states, the United States and its NATO allies were actively involved in negotiating arrangements to continue these most important arms control treaties.¹¹⁶

115. Vienna Convention on the Law of Treaties, May 23, 1969, art. 18, U.N. Doc. A/Conf. 39/27 (1969). Unlike the 1978 Convention referred to repeatedly in the text, this convention is in force (over 50 parties including the former Soviet Union, but not the U.S.). See Akehurst, *supra* note 112, at 123. Though the United States never became a party to the Vienna Convention on Treaties, the Department of State said in 1971 that the convention "is already generally recognized as the authoritative guide to current treaty law and practice." S. Exec. Doc. L, 92d Cong., 1st Sess. 1 (1971). The practice of the United States in dealing with arms control treaties that are not yet in effect follows art. 18. 1980 Digest, *supra* note 19, at 398-406; Restatement, *supra* note 17, § 312(3); ACD Agreements, *supra* note 28, at 263-64; Gloria Duffy, *Compliance and the Future of Arms Control* 7 (1988). Article 18 has probably become customary international law by now and therefore is obligatory for the United States, Russia, and probably the other Soviet republics. See *infra* text accompanying note 116.

116. During 1991-92 two new urgent nuclear-weapons initiatives arose. First, Presidents Bush and Gorbachev made announcements in September and October 1991 to reduce by unilateral actions most of their deployed tactical nuclear weapons. Significant progress has

In arguing for continuity for Soviet arms control treaties already in effect, or signed but not yet ratified, the United States joined other countries in initially persuading the former Soviet republics that only one nuclear-weapon power should arise from among their ranks, and that they should cooperate in carrying out all of the treaties. The most feared alternative, which will remain until START I, as amended by the Lisbon Protocol, is fully implemented, combines the emergence of several new nuclear-weapon powers, the erosion of the NPT norm against proliferation of nuclear weapons to additional countries and the greater likelihood of both availability and use of nuclear weapons in the future. The acceptance of continuity for these treaties by all interested countries, and their faithful implementation of them over the years ahead, will be a major contribution to stability in the region and in the world. The failure to do so could lead to catastrophic consequences. We are now at "a fateful fork in the road."¹¹⁷

To prevent the emergence of new nuclear powers in the former Soviet Union will require further negotiations with Ukraine and Kazakhstan.¹¹⁸ More is involved than payment for the value of the

been made. When this initiative is combined with the INF (see Special Supplement—Summary and Text of the INF Treaty and Protocols, *Arms Control Today*, Jan./Feb. 1988), as well as START I and START II reductions, the results will lead to vast excesses of highly enriched uranium ("HEU") and bomb-grade plutonium. In this connection, the United States and Russia agreed in principle in August 1992 to a twenty-year program for the blending and conversion of 500 metric tons of the Russian HEU into low enriched uranium ("LEU") for use in power reactors to generate electricity. The LEU would be sold to the United States for hard currency. The agreement was signed on February 18, 1993, but the price has not yet been agreed upon, and the sharing of the "Russian" proceeds with Ukraine and other former republics is not yet settled (this is another of the issues complicating Ukrainian ratification of START I). See Dunbar Lockwood, U.S., Russia Reach Agreement on Sale of Nuclear Weapons Material, *Arms Control Today*, Mar. 1993, at 22; Coordinators for Ex-Soviet Aid Say Help Now Will Pay Later, 51 Cong. Q., Feb. 27, 1993, at 471-72; Cooperative Denuclearization, *supra* note 2, at 124 n.23; Keeny, *supra* note 8, at 2. Informal, reciprocal arrangements and technical agreements, including those worked out in the Safety, Security and Dismantlement ("SSD") discussions, played a key role during this period, particularly when speed was of the essence. See Matthew Bunn, Bush and Yeltsin Press New Nuclear Cutbacks, *Arms Control Today*, Jan./Feb. 1992, at 38; Dunbar Lockwood, Plans for U.S. Aid for Russian Warhead Dismantlement Detailed, *Arms Control Today*, July/Aug. 1992, at 27.

117. Cooperative Denuclearization, *supra* note 2, at 1-2. The editors in the opening chapter of this book lay out a series of "what if" scenarios, *id.* at 9-12, noting that "the overall probability of a nuclear disaster—involving one or several detonations on the territories of [the United States, newly-independent states of the former Soviet Union, Japan and Europe]—has increased," *id.* at 2, and that the "actions required amount to a practical undertaking of herculean proportions." *Id.* at 6.

118. Russia and Ukraine are probably not capable of reaching agreement on these sensitive matters on their own. Because of its diplomatic persuasion, economic assistance and technical know-how, the United States may have to broker an agreement. This process has begun. See

uranium in weapons deployed in these countries. As our NATO allies did years ago, the former Soviet republics now need assurance that nuclear weapons are not required to protect them from a potentially hostile Russia, among other threats. They need assurance that the nuclear material from the warheads on their territory will not be made into new nuclear weapons, and that the United States and other supporters of the NPT norm against additional nuclear-weapon powers will apply that norm to other countries besides the former Soviet Union. They must also be assured that the United States and Russia will continue to reduce their own nuclear arsenals, will deemphasize the importance of their remaining nuclear weapons and will lead the way toward a peaceful world in which the hope for nuclear disarmament expressed in the NPT can be achieved.¹¹⁹ At the same time, they need to be told that an insistence upon becoming true nuclear-weapon powers will make them pariahs—excluded from technical assistance, financial aid, trade and loans from most of the rest of the world.¹²⁰

In the final analysis, Ukraine is unlikely to make a firm and final decision on its nuclear-weapon status until the prospects of democratic reform in Russia are clearer. Nuclear arms control, nuclear non-proliferation and fundamental issues of U.S. and world security rest on the uncertain foundation of Russia's future. As President Clinton said in addressing aid to the former Soviet Union, "[a]t the heart of it all is Russia."¹²¹ But as the State Department's former expert on Soviet nationality problems has stated, "[t]he most serious and difficult question confronting Russians today is not how they will survive economic reform but rather whether they can accept the independence of the 14 other former Soviet republics as legitimate."¹²²

Michael R. Gordon, *Ukrainian Official Backs U.S. Plan on Atom Arms*, N.Y. Times, June 8, 1993, at A7. The Clinton Administration has agreed to increase financial assistance to Russia as part of a broad and complex agenda. See Ann Devroy & Margaret Shapiro, *Yeltsin Gets \$1.6 billion in U.S. Aid: Summit Ends With Pledges of Partnership*, Wash. Post, Apr. 5, 1993, at A1.

119. The NPT obligates its parties "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." NPT, *supra* note 51, art. VI. An ultimate goal stated in the preamble is the "cessation of the manufacture of nuclear weapons, the liquidation of all their existing stockpiles, and the elimination from national arsenals of nuclear weapons and the means of their delivery." *Id.* preamble.

120. See Keeny, *supra* note 8; *Ukraine: Barrier to Nuclear Peace*, N.Y. Times, Jan. 11, 1993, at A16.

121. President Clinton's Address to the American Society of Newspaper Editors, April 1, 1993, reprinted in 51 Cong. Q., Apr. 3, 1993, at 860.

122. Paul A. Goble, *Russia and its Neighbors*, 90 Foreign Policy 79, 79 (Spring 1993).