

**ADHERENCE TO AND COMPLIANCE  
WITH  
ARMS CONTROL, NONPROLIFERATION,  
AND  
DISARMAMENT AGREEMENTS  
AND COMMITMENTS**



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# **ADHERENCE TO AND COMPLIANCE WITH ARMS CONTROL, NONPROLIFERATION, AND DISARMAMENT AGREEMENTS AND COMMITMENTS**

## **INTRODUCTION**

### **PURPOSE**

This Report is submitted pursuant to Section 403 of the Arms Control and Disarmament Act, as amended (22 U.S.C. 2593a), which requires a report by the President on *Adherence to and Compliance with Arms Control, Nonproliferation, and Disarmament Agreements and Commitments*.

### **SCOPE OF THE REPORT**

This Report provides an assessment of U.S. adherence to obligations undertaken in arms control, nonproliferation, and disarmament agreements, as well as an assessment of the adherence of other nations to obligations undertaken in arms control, nonproliferation, and disarmament agreements and related commitments, including the Missile Technology Control Regime, to which the United States is a participating state. The issues addressed in this Report primarily reflect activities from January 1, 2009, through December 31, 2010, unless otherwise noted.<sup>1</sup>

Pursuant to 22 U.S.C. 2593a.(a)(6), this unclassified version of the Report identifies questions, to the maximum extent practicable, that exist with respect to compliance by other countries with their arms control, nonproliferation, and disarmament agreements and commitments with the United States. In comparison to classified versions of the Report, this unclassified version may contain less detailed information, fewer compliance assessments, and findings phrased to safeguard sensitive or special reporting while at the same time fulfilling the Report's statutory requirement.

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<sup>1</sup> In this Report, previous editions of the Report are cited by their year of release (e.g., the 2010 Report) unless otherwise noted. The last edition of the Report was released in 2010 and primarily reflected activities from January 2004 through December 2008. An edition was released in 2005, primarily reflecting activities from January 2002 through December 2003, and an edition was released in 2003, primarily reflecting activities from December 2000 through December 2001. Each edition prior to the 2003 Report primarily reflected activities that occurred during the year preceding the edition's release.

## **ADHERENCE TO AGREEMENTS**

Effective arms control requires parties to comply fully with arms control obligations and commitments they have undertaken. For the arms control, nonproliferation, and disarmament agreements and commitments to which the United States is a participating state, the United States and the majority of the other participating nations are adhering to their obligations and commitments and have indicated their intention to continue doing so. This Report indicates there are compliance questions and concerns – and in some instances findings of serious treaty violations – involving a relatively small number of countries. The United States continues to pursue resolution of those compliance issues where appropriate.

**U.S. Organizations and Programs to Evaluate and Ensure Treaty Compliance.** Our deep-seated legal tradition, a commitment to U.S. arms control agreements that enhance our security and that of our allies and friends, and our open society create powerful incentives to comply with agreements to control nuclear weapons and other weapons of mass destruction. Legal and institutional procedures to ensure compliance have been established, and they reflect the seriousness with which these obligations are taken and reinforce these underlying policies and principles. For example, U.S. Department of Defense (DoD) compliance review groups oversee and manage DoD compliance with arms control, nonproliferation, and disarmament agreements and related commitments. U.S. interagency organizations oversee and manage analysis of the compliance of other nations with arms control, nonproliferation, and disarmament agreements and related commitments. Moreover, an interagency review is conducted in appropriate cases, including when other treaty parties officially raise questions regarding U.S. implementation of its obligations. Finally, Congress performs oversight functions through committee hearings and budget allocations.

## **OVERVIEW**

This Report addresses U.S. compliance with arms control agreements (Part I), compliance by Russia and other successor states of the Soviet Union with treaties and agreements that the United States concluded bilaterally with the Soviet Union (Part II), compliance by other countries that are parties to multilateral agreements with the United States (Part III), and compliance with commitments made less formally but that bear directly upon arms control, nonproliferation, or disarmament issues (Part IV).

# **PART I: U.S. COMPLIANCE WITH ARMS CONTROL, NONPROLIFERATION, AND DISARMAMENT AGREEMENTS AND COMMITMENTS**

## **U.S. INSTITUTIONAL AND PROCEDURAL ORGANIZATION FOR ENSURING COMPLIANCE**

There are processes within the U.S. executive branch that operate to ensure U.S. plans and programs remain consistent with U.S. international obligations. These include internal U.S. Department of Defense (DoD) controls and U.S. Department of Energy (DOE) procedures and controls. Both operate in parallel, and in addition, to congressional oversight.

In 1972, by direction of the President, the DoD established a process to ensure that all DoD programs comply with U.S. international obligations. Under this compliance process (established at the conclusion of the Strategic Arms Limitation Talks (SALT) that led to arms control-related agreements), key offices in DoD are responsible for overseeing DoD compliance with all U.S. arms control, nonproliferation, and disarmament commitments. DoD components ensure that their implementing program offices adhere to DoD compliance directives and seek guidance from the offices charged with oversight responsibility. Interagency reviews are also conducted in appropriate cases, such as when other treaty parties formally raise questions regarding U.S. implementation of its arms control obligations.

## **U.S. TREATY COMPLIANCE**

The United States is in compliance with all its obligations under arms control, nonproliferation, and disarmament agreements and commitments, and continues to make every effort to comply scrupulously with them. When U.S. treaty partners have raised compliance questions regarding U.S. implementation activities, the United States has carefully reviewed the matter to confirm that its actions were in compliance with its treaty obligations.

## **PART II: COMPLIANCE WITH TREATIES AND AGREEMENTS CONCLUDED BILATERALLY WITH THE SOVIET UNION OR ITS SUCCESSOR STATES**

### **INTERMEDIATE-RANGE NUCLEAR FORCES (INF) TREATY**

The Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Elimination of Their Intermediate-Range and Shorter-Range Missiles (INF Treaty) was signed by President Reagan and Soviet General Secretary Gorbachev on December 8, 1987, and entered into force on June 1, 1988. Elimination of all declared missiles and launchers under the Treaty was completed in 1991.

The Treaty is of unlimited duration and bans the possession, production, and flight testing of intermediate- and shorter-range missile systems. The Treaty required the complete elimination of all the approximately 800 U.S. and approximately 1,800 former Soviet ground-launched missiles with ranges between 500 and 5,500 kilometers, their launchers, and their associated support equipment and structures. All such items were eliminated by May 28, 1991.

The Treaty established a verification regime using national technical means of verification (NTM), notifications, and an on-site inspection regime to detect and deter violations of Treaty obligations. The inspection regime concluded at the end of 13 years following the Treaty's entry into force, that is, on May 31, 2001. All inspection activities have now ceased in accordance with the provisions of the Treaty. The remainder of the verification regime continues for the life of the Treaty.

The Parties to the Treaty last met in the Special Verification Commission in October 2003. There have been no issues raised in the intervening period.

## **PART III: OTHER NATIONS' (INCLUDING SUCCESSOR STATES') COMPLIANCE WITH MULTILATERAL AGREEMENTS**

### **BIOLOGICAL AND TOXIN WEAPONS CONVENTION (BWC)**

As of the end of 2010, there were 163 States Parties to the 1972 Biological and Toxin Weapons Convention (BWC or Convention), and an additional 13 countries had signed but not yet ratified the agreement. This Report addresses BWC-related issues regarding China, Cuba, India, Iran, Iraq, Libya, North Korea, Pakistan, and the Russian Federation, all of which are States Parties to the BWC. In 1987, BWC States Parties established an annual data exchange, referred to as the Confidence-Building Measures (CBMs). The CBMs were modified and expanded in 1991. The arrangement establishing the CBMs was not legally binding and not all States Parties submit reports. This Report also addresses biological warfare (BW)-related activities of Egypt and Syria, which have signed but not ratified the BWC.

### **COUNTRY ASSESSMENTS**

#### **CHINA**

#### **FINDING**

Available information indicates China engaged during the reporting period in biological activities with potential dual-use applications; however, the information did not indicate that China is engaged in activities prohibited by the BWC.

#### **BACKGROUND**

China became a State Party to the BWC in 1984. Its compliance with the Convention has been addressed since the 1993 Report.

China's CBM declarations have not documented a historical offensive BW program.

Available information indicates that China continued during the reporting period to develop its biotechnology infrastructure, pursue scientific cooperation with entities of several countries, and engage in biological activities with potential dual-use applications. However, the information did not indicate China engaged in activities prohibited by the BWC. China has adopted national export controls to address the challenges of biological weapons proliferation.

China's State Council issued a January 2009 white paper, *China's National Defense in 2008*, stating that China had established a comprehensive legislation system for the implementation of the BWC, set up a national implementation focal point, and submitted its BWC CBM declarations in a timely manner.

### **Compliance Discussions**

No BWC compliance issues were raised between the United States and China during the reporting period. China maintained that it was meeting its BWC obligations.

## **CUBA**

### **FINDING**

Information available through the end of 2010 did not indicate that Cuba is engaged in activities prohibited by the BWC.

### **BACKGROUND**

Cuba became a State Party to the BWC in 1976. Its compliance with the Convention was first addressed in the 2003 Report.

Cuba has a sophisticated biotechnology infrastructure that, according to available information, continued during the reporting period to engage in a range of pharmaceutical, biomedical, and agricultural activities. These included supplying products such as vaccines and pharmaceuticals to other countries, and pursuing scientific cooperation with entities of other countries. Information available through the end of 2010 did not indicate Cuba is engaged in activities prohibited by the BWC.

### **Compliance Discussions**

During the reporting period, the United States did not raise any issues regarding Cuba's compliance with the BWC.

## **EGYPT**

### **FINDING**

As of the end of 2010, available information did not indicate that Egypt is engaged in activities prohibited by the BWC. Since Egypt is a signatory and not a

State Party to the BWC, its compliance with the Convention has not been formally assessed.

## **BACKGROUND**

Egypt signed the BWC in 1972 but has yet to ratify the Convention. Egypt's compliance with the BWC has not been formally assessed because it is a signatory and not a State Party to the Convention.

Available information indicated Egypt continued during the reporting period to improve its biotechnology infrastructure, engage in biological research and development activities including genetic engineering techniques, and pursue scientific cooperation with other countries. However, as of the end of 2010, available information did not indicate that Egypt is engaged in activities prohibited by the BWC.

### **Compliance Discussions**

During the reporting period, the Egyptian Government affirmed that it remains committed to the prohibition of the development, production, and stockpiling of bacteriological and toxin weapons.

## **INDIA**

### **FINDING**

Information available through the end of 2010 did not indicate that India is engaged in activities prohibited by the BWC. India has continued efforts to strengthen its export control of biological materials.

### **BACKGROUND**

India became a State Party to the BWC in 1974.

Available information indicates India has a rapidly growing biotechnology infrastructure, and that its activities during the reporting period included pursuing scientific cooperation with entities in other countries, including the United States, and research relating to pathogens and toxins such as ricin, abrin, and anthrax. Information available through the end of 2010 did not indicate that India is engaged in activities prohibited by the BWC.

### Compliance Discussions

The United States and India continued during the reporting period to discuss issues relating to transfer of biotechnology and to pursue cooperative activities relating to customs and export control reform.

## **IRAN**

### **FINDING**

Available information indicated Iran continued during the reporting period to engage in activities with potential dual-use BW applications. It remained unclear whether any of these activities were prohibited by the BWC.

### **BACKGROUND**

Iran became a State Party to the BWC in 1973. Its compliance with the Convention has been addressed since the 1993 Report.

Available information indicated that Iran continued during the reporting period to engage in activities with potential dual-use BW applications. It remained unclear whether any of these activities were prohibited by the BWC.

### Compliance Discussions

Issues relating to Iran's potential dual-use BW activities continued to be raised during the reporting period in multilateral channels.

In April 2010, Iran's Ambassador to the United Nations sent a letter to the UN Security Council (UNSC) indicating Iran is firmly committed to full implementation of the BWC. In May 2010, senior Iranian officials publicly condemned the production of biological weapons and stated that Iran has never sought to produce or acquire a biological weapon.

## **IRAQ**

### **FINDING**

As of the end of 2010, available information did not indicate that Iraq is engaged in activities prohibited by the BWC.

## **BACKGROUND**

Iraq became a State Party to the BWC in 1991. The UN Security Council's adoption of Resolution 1483 in May 2003, following the fall of the Hussein regime, reaffirmed that Iraq must meet its disarmament obligations. Iraq's compliance with the BWC has been addressed since the 1993 Report.

In a joint U.S.-UK letter dated June 28, 2007, the U.S. Secretary of State and UK Secretary of State for Foreign and Commonwealth Affairs informed the UN Security Council that all appropriate steps had been taken to secure, remove, disable, render harmless, eliminate, or destroy: (a) all of Iraq's known WMD and ballistic missiles with a range of greater than 150 kilometers; and (b) all known elements of Iraq's programs established to research, develop, design, manufacture, produce, support, assemble, and employ such weapons and delivery systems, subsystems, and components thereof.

As of the end of 2010, available information did not indicate that Iraq is engaged in activities prohibited by the BWC.

### **Compliance Discussions**

During the reporting period, no BWC compliance issues were raised between the United States and Iraq.

In correspondence to the UN Security Council in January 2010, the Iraqi Government reiterated its commitment to the BWC and to the 1925 Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare (1925 Geneva Protocol). Iraq also noted that its National Monitoring Directorate is the national focal point for the implementation of the BWC, and that the Directorate annually undertakes confidence-building measures and submits information in that regard to the United Nations.

Iraq contributed during the reporting period to multilateral discussions on biological weapons, emphasizing that it opposes biological weapons and WMD in the hands of non-state actors.

## **LIBYA**

### **FINDING**

Available information continues to indicate that Libya is complying with its obligations under the BWC and is fulfilling the biological weapons-related

commitments Libya made in December 2003 when it committed to rid itself of internationally proscribed weapons.

## **BACKGROUND**

Libya became a State Party to the BWC in 1982. Its compliance with the Convention has been addressed since the 1993 Report.

On December 19, 2003, Libya's Foreign Ministry issued a statement indicating that Libya had decided of its own free will to eliminate the materials, equipments, and programs that lead to production of internationally proscribed weapons so that Libya may be completely free of such weapons. The Foreign Ministry's statement also confirmed that Libya would be bound by the BWC, among other international agreements.

Information available through the end of 2010 did not indicate Libya is engaged in activities that are prohibited by the BWC or inconsistent with Libya's December 2003 biological weapons-related commitments.

### **Compliance Discussions**

During the reporting period, no issues were raised between the United States and Libya regarding Libya's adherence to its BWC obligations or December 2003 biological weapons-related commitments.

## **NORTH KOREA (DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA (DPRK))**

### **FINDING**

North Korea may still consider the use of biological weapons as an option, contrary to the BWC. North Korea continues to develop its biological research and development capabilities, but has yet to declare any relevant developments as part of the BWC confidence-building measures.

### **BACKGROUND**

North Korea became a State Party to the BWC in 1987. Its compliance with the Convention was first addressed in the edition of this Report covering the year 2000.

The only BWC-related declaration that North Korea has made was a BWC CBM declaration in 1990.

Available information indicated North Korean entities engaged during the reporting period in a range of biological research and development activities, including pursuing scientific cooperation with entities of other countries.

The United States notes that North Korea may still consider the use of biological weapons as an option, contrary to the BWC.

In June 2009, the UN Security Council passed Resolution 1874, which, *inter alia*, authorized and required all Member States to seize and dispose of items the supply, sale, transfer, or export of which is prohibited by paragraph 8(a), 8(b) or 8(c) of UN Security Council Resolution (UNSCR) 1718 (2006), and that are identified in an inspection conducted pursuant to paragraph 11, 12, or 13 of Resolution 1874. UNSCR 1718 requires all Member States to prevent the supply, sale, or transfer to the DPRK, and to prohibit procurement from the DPRK, of certain items that could contribute to the DPRK's nuclear-related, ballistic missile-related, or other weapons of mass destruction-related programs. The list of items, materials, equipment, goods, and technology related to biological and chemical weapons to be included under the sanctions provisions of UNSCR 1718 was issued by the UN DPRK Sanctions Committee in S/2006/853.

### **Compliance Discussions**

During the reporting period, discussions regarding North Korea's compliance with its BWC obligations continued in multilateral fora.

In the past, North Korea has rejected the view that it is not meeting its BWC obligations. It has also stated that it opposes the development and use of biological weapons, and that it does not possess a single biological weapon.

## **PAKISTAN**

### **FINDING**

Information available through the end of 2010 did not indicate Pakistan is engaged in activities prohibited by the BWC. Pakistan continued during the reporting period to work to improve its biological weapons-related export controls. It has yet to submit an annual confidence-building measure (CBM) declaration.

### **BACKGROUND**

Pakistan became a State Party to the BWC in 1974.

Pakistan has a modernizing biotechnology infrastructure that continued during the reporting period to pursue a range of biological research and development activities. These included pursuing scientific cooperation with entities in other countries, such as the United States. Information available through the end of 2010 did not indicate Pakistan is engaged in activities prohibited by the BWC.

As of the end of 2010, Pakistan had yet to submit an annual CBM declaration. In 2010, Pakistan indicated it was preparing its first declaration.

### **Compliance Discussions**

The United States and Pakistan continued to collaborate during the reporting period on improving Pakistan's BW-related export controls.

## **RUSSIAN FEDERATION**

### **FINDING**

Available information during the reporting period indicated Russian entities have remained engaged in dual-use, biological activities. It is unclear that these activities were conducted for purposes inconsistent with the BWC. It also remains unclear whether Russia has fulfilled its BWC obligations in regard to the items specified in Article I of the Convention that it inherited.

### **BACKGROUND**

The Soviet Union became a State Party to the BWC in 1975. Russia's BWC compliance was first addressed in the 1993 Report, while the Soviet Union's BWC noncompliance was first addressed in the January 1984 Report to Congress on Soviet Non-compliance with Arms Control Agreements.

*Russia's Acknowledgement of Inherited Soviet Activities.* In January 1992, President Yeltsin announced that Russia renounced the former Soviet Union's reservations to the 1925 Geneva Protocol that had allowed for retaliatory use of biological weapons. (The Duma voted to remove these reservations in 2001.) In April 1992, President Yeltsin signed a decree committing Russia as the BWC successor to the Soviet Union and prohibiting illegal biological warfare activity in Russia. During discussions in Moscow in September 1992, Russian officials confirmed the existence of a biological weapons program inherited from the Soviet Union, committed themselves to dismantling it, and agreed to on-site verification procedures.

Although Russia had inherited the past offensive program of biological research and development from the Soviet Union, Russia's annual BWC confidence-building measure declarations since 1992 have not satisfactorily documented whether this program was completely destroyed or diverted to peaceful purposes in accordance with Article II of the BWC.

Russian entities remained engaged during the reporting period in BW-relevant activities. It also remains unclear if Russia has fulfilled its obligations under Article II of the BWC to destroy or divert to peaceful purposes the items specified in Article I of the Convention that it inherited from the Soviet Union.

### **Compliance Discussions**

Discussions again took place during the reporting period in multilateral fora, and between the United States and Russia, regarding Russia's compliance with the BWC. Russia maintained that it is in compliance with the Convention.

## **SYRIA**

### **FINDING**

It remained unclear during the reporting period whether Syria, a signatory to the BWC, is engaged in activities prohibited by the BWC and whether it would consider the use of biological weapons as a military option.

### **BACKGROUND**

Syria signed the BWC in April 1972, but has yet to ratify the Convention. Syria's BW-related activities have been addressed since the 1993 Report.

It remained unclear during the reporting period whether Syria would consider the use of biological weapons as a military option.

It remained unclear during the reporting period whether Syria is engaged in activities prohibited by the BWC.

Pursuant to U.S. Executive Order 13382, the United States had designated four Syrian entities as WMD proliferators during the previous reporting period out of concern their activities focused on the development of biological and chemical weapons. These designations remained in effect through the end of this reporting period.

Discussions regarding Syria's BW-related activities continued among the United States and other countries during the reporting period.

### *Compliance Discussions*

During a regional workshop on the implementation of UN Security Council Resolution 1540 in March 2009, the Syrian representative stated that Syria did not have any weapons of mass destruction, did not want to acquire any, and was not helping other countries to get materials to develop WMD.

## **TREATY ON CONVENTIONAL ARMED FORCES IN EUROPE (CFE)**

For a discussion of other nations' adherence to their obligations under the CFE Treaty, see the Report on Compliance with the Treaty on Conventional Armed Forces in Europe submitted consistent with Condition 5(C) of the Senate Resolution of Advice and Consent to Ratification of the CFE Flank Document (also known as the "Condition 5(C) Report") and submitted contemporaneously with this Report.

## **VIENNA DOCUMENT 1999 ON THE NEGOTIATIONS ON CONFIDENCE- AND SECURITY-BUILDING MEASURES**

On March 4, 1992, the participating States in the Conference on Security and Cooperation in Europe (CSCE), including all successor states to the Soviet Union, adopted Vienna Document 1992 (VD92), which added to and built upon the undertakings in Vienna Document 1990 (VD90). Subsequently, most of the successor states of the former Yugoslavia also joined VD92. In November 1994, at the CSCE Summit in Budapest, VD92 was expanded and incorporated into Vienna Document 1994 (VD94). At that time, the CSCE became the Organization for Security and Cooperation in Europe (OSCE). During 1999, the participating States to VD94 completed discussions to update the Document, and improved provisions were accepted in Vienna Document 1999 (VD99) at the OSCE Istanbul Summit in November 1999. The measures contained in VD99 are politically binding upon the participating States.

In 2009, 96 inspections and 46 evaluation visits of units and formations were conducted by the participating States under the provisions of VD99. In addition, 11 inspections and 25 evaluation visits were conducted using VD99 procedures under bilateral agreements that offer additional quotas to the participants.

In 2010, 98 inspections and 48 evaluation visits of units and formations were conducted by the participating States under the provisions of VD99. In addition, 16 inspections and 34 evaluation visits were conducted using VD99 procedures under bilateral agreements that offer additional quotas to the participants.

In the most recent annual VD99 exchange of confidence- and security-building measures (CSBM) data, 49 of the 50 participating States with armed forces provided CSBM data as of the end of 2010.

## **CHEMICAL WEAPONS CONVENTION (CWC)**

For a discussion of other nations' adherence to their obligations under the Chemical Weapons Convention, see the Report on Chemical Weapons Convention Compliance submitted in accordance with Condition 10(C) of the Senate Resolution of Advice and Consent to the Chemical Weapons Convention (also known as the "Condition 10(C) Report") and submitted contemporaneously with this Report.

## **NUCLEAR NON-PROLIFERATION TREATY (NPT)**

This section of the Report covers developments relevant to other nations' compliance with the 1968 Nuclear Non-Proliferation Treaty (NPT) and addresses, in particular, developments in Burma, China, Iran, North Korea (DPRK), and Syria.

As of the end of 2010, there were 17 non-nuclear-weapon States (NNWS) party to the NPT that had not yet brought into force a comprehensive safeguards agreement with the International Atomic Energy Agency (IAEA). The NPT does not require adherence to an IAEA Additional Protocol, which contains measures that increase the IAEA's ability to verify the non-diversion of declared nuclear material and to provide assurances as to the absence of undeclared nuclear material and activities in a State. As of the end of 2010, 139 States had an Additional Protocol approved by the IAEA Board of Governors, 135 of those had been signed, and 104 had entered into force (the Additional Protocol entered into force for the United States on January 6, 2009).

### **COUNTRY ASSESSMENTS**

#### **BURMA**

##### **FINDING**

The United States remains concerned about Burma's interest in pursuing a nuclear program, including the possibility of cooperation with North Korea. The U.S. Government continues to be alert to any indications of Burmese nuclear weapons-related activities or intentions to develop a nuclear weapons capability. As of the end of 2010, available information did not support a conclusion that Burma had engaged in activities prohibited by its NPT obligations or IAEA safeguards, but U.S. confidence in Burma's compliance would be enhanced by the adoption of an Additional Protocol.

##### **BACKGROUND**

Burma became a State Party to the NPT in 1992 and its NPT Safeguards Agreement with the IAEA entered into force in 1995. As a country with little to no nuclear material, Burma concluded a Small Quantities Protocol (SQP) in April 1995. The SQP holds in abeyance most of the operative provisions of the Safeguards Agreement. As of the end of 2010, Burma had not signed the Additional Protocol, modified its SQP as called for by the IAEA Board of Governors in September 2005, or modified Code 3.1 of the Subsidiary Arrangements to its Safeguards Agreement. The latter would obligate Burma to notify the IAEA of a decision to build a nuclear facility.

As early as 2002, the Burmese Government had publicly announced its intention to acquire a nuclear research reactor for peaceful purposes under IAEA auspices.

In May 2007, Burma and Russia signed an agreement for Russia to assist in building a nuclear research center in Burma that would include a 10 Megawatt (MW) light-water research reactor. Russia has provided public assurances that the research reactor would be placed under IAEA safeguards.

The United States has expressed concerns about Burma's interest in pursuing a nuclear program, including the possibility of cooperation with North Korea.

As of the end of 2010, available information did not indicate there had been progress in establishing the nuclear research center called for in the Burma-Russia agreement, or that Burma's efforts to establish the center had involved activities prohibited by the NPT or by IAEA safeguards. The United States continues to note that U.S. confidence in Burma's compliance would be enhanced by the adoption of an Additional Protocol.

### **Compliance Discussions**

The United States and numerous other countries continued during the reporting period to exchange views regarding Burma's nuclear intentions, including at senior diplomatic levels. The United States urged Burma to sign the IAEA Additional Protocol.

In June 2010, the Democratic Voice of Burma (DVB), an Oslo-based Burmese dissident group, issued a report alleging that the Government of Burma was pursuing a nuclear weapons program with the help of North Korea. The Burmese Government rejected the conclusions of the DVB report.

In September 2010, Burma affirmed in a statement to the IAEA General Conference that the applications of nuclear science and technology in Burma were only for peaceful developmental purposes and that Burma would never engage in activities related to the production and proliferation of nuclear weapons.

## **CHINA**

### **FINDING**

Non-Chinese foreign entities continued during the reporting period to pursue nuclear-related activities with Chinese entities. Information available as of the end of 2010 did not indicate, however, that the Chinese Government is engaged in activities prohibited by the NPT or by IAEA safeguards.

### **BACKGROUND**

China acceded to the NPT in 1992, joining the Treaty as a nuclear-weapon State Party. Its NPT Safeguards Agreement had entered into force in 1989. China's

compliance with its NPT obligations was first raised in the 1993 Report. China's Additional Protocol entered into force in 2002.

During the reporting period, non-Chinese foreign entities continued to pursue nuclear-related activities with Chinese entities. Information available as of the end of 2010 did not indicate, however, that the Chinese Government is engaged in activities prohibited by the NPT or by IAEA safeguards.

### **Compliance Discussions**

In 2009 and 2010, the Chinese Government repeatedly affirmed its commitment to implementing the NPT and the UN Security Council (UNSC) resolutions related to nuclear proliferation. The United States continued to work with China in strengthening its nuclear export controls.

## **IRAN**

### **FINDING**

Iran is in violation of obligations under the NPT, its IAEA Safeguards Agreement, and relevant UN Security Council resolutions.

### **BACKGROUND**

Iran became a State Party to the NPT in 1970 and its NPT Safeguards Agreement entered into force in 1974. Iran signed the Additional Protocol in 2003 and implemented it provisionally and selectively from 2003 to 2006, when provisional implementation was suspended.

Iran's violations of its obligations under the NPT and its IAEA Safeguards Agreement have been ongoing since the early 1980s. In 2002, an Iranian opposition group publicly revealed covert nuclear facilities under construction at Natanz and Arak in Iran that Iran had failed to declare to the IAEA. Developments led the IAEA Board of Governors to declare Iran in noncompliance with its IAEA Safeguards Agreement in 2005 and to report the case to the UN Security Council in 2006.

Developments during the reporting period included the following. Iran continued to make progress on uranium enrichment-related activities, such as continuing construction of a new (formerly covert) enrichment facility near the city of Qom (also known as the Fordow site), developing advanced centrifuges, enriching uranium up to 20 percent, and indicating its intention to build ten new uranium enrichment facilities. Iran also continued to make progress on its heavy water-related activities, including the construction of its IR-40 heavy water moderated research reactor at Arak and the operation of its heavy water production plant at Arak. On the unresolved issues

concerning the possibility of military dimensions to Iran's nuclear program, there was no movement by Iran. IAEA reporting indicated that, since August 2008, Iran has declined to discuss these unresolved issues with the IAEA or to provide any further information or access to locations and people necessary to address the IAEA's concerns. In addition, the IAEA indicated that, as of November 2010, there were no ongoing reprocessing-related activities in Iran at the facilities to which the IAEA has access. Finally, Iran repeatedly failed to report design changes to nuclear installations well in advance of any action taken to modify existing facilities or construct new ones, as required by modified Code 3.1 of the Subsidiary Arrangements to Iran's NPT Safeguards Agreement.

The IAEA Director General reiterated publicly during the reporting period that, while the IAEA continues to verify the non-diversion of declared nuclear material in Iran, Iran has not provided the necessary cooperation to permit the IAEA to provide assurances that Iran's nuclear program is exclusively peaceful. The United States notes that Iran continues to engage in uranium enrichment- and heavy water-related activities in violation of UN Security Council resolutions. It also continues to fail to fully meet its obligations under modified Code 3.1 of the Subsidiary Arrangements to its NPT Safeguards Agreement. In addition, there was no movement by Iran during the reporting period on outstanding issues which need to be clarified to exclude the possibility of military dimensions to its nuclear program. Iran's failure to implement its IAEA Safeguards Agreement also constitutes a violation of its NPT Article III obligations. Moreover, Iran had previously received assistance in the manufacture of nuclear weapons in violation of its Article II obligations, as noted in the 2005 and 2010 Reports. The issues underlying that finding remain unresolved.

### **Compliance Discussions**

In November 2009, the IAEA Board of Governors (BOG) passed a resolution urging Iran to comply fully and without delay with its obligations and expressing concern with Iran's construction of the formerly undeclared uranium enrichment plant at Qom. In June 2010, the UN Security Council adopted Resolution 1929 imposing a range of sanctions against Iran. The Security Council has now adopted six resolutions on Iran (UNSCRs 1696, 1737, 1747, 1803, 1835, and 1929), four of which impose binding Chapter VII sanctions.

During the reporting period, the United States continued to support the IAEA in addressing Iran's nuclear program and to work closely with the other P5+1 countries (China, France, Germany, Russia, and the United Kingdom) on the issue. In addition, the United States continued to impose sanctions on entities and individuals involved in nuclear-related proliferation with Iran. The IAEA, the United States, and numerous other countries urged Iran to cooperate with the IAEA and to implement UNSC and IAEA BOG resolutions, the Additional Protocol, and modified Code 3.1. However, Iran continued to maintain that its nuclear program was peaceful and to reject concerns regarding its nuclear activities and lack of full cooperation with the IAEA.

**NORTH KOREA**  
**(DEMOCRATIC PEOPLE’S REPUBLIC OF KOREA (DPRK))**

**FINDING**

North Korea was in violation of its obligations under Articles II and III of the NPT and under its IAEA Safeguards Agreement before its announced withdrawal from the NPT in 2003. In addition, North Korea’s continuing nuclear activities, including its uranium enrichment activities and construction of a small light-water reactor, are further violations of UNSCRs 1718 and 1874 and of the DPRK’s commitments under the 2005 Joint Statement of the Six-Party Talks.

**BACKGROUND**

North Korea acceded to the NPT in 1985 and its IAEA Safeguards Agreement entered into force in 1992. In 2003, the DPRK announced its withdrawal from the NPT. In the Joint Statement released by the Six Parties (China, Japan, North Korea, Russia, South Korea, and the United States) in September 2005, the DPRK committed, *inter alia*, to abandoning all nuclear weapons and existing nuclear programs and returning, at an early date, to the NPT and to IAEA safeguards.

Previous editions of this Report have described violations by North Korea of its obligations under Articles II and III of the NPT and under its IAEA Safeguards Agreement before its announced withdrawal from the NPT in 2003. Previous editions also described North Korea’s violations of its political commitments under the Agreed Framework. During the reporting period, those violations had not been remedied.

On April 14, 2009, North Korea announced its withdrawal from the Six-Party Talks, the expulsion of U.S. disablement experts and IAEA inspectors who had been monitoring nuclear facilities in the DPRK since July 2007, and its intention to reverse disablement actions taken at the Yongbyon nuclear complex. On May 25, 2009, North Korea publicly announced that it had successfully conducted its second underground nuclear test.<sup>1</sup> The UN Security Council adopted UNSCR 1874 in response, tightening sanctions against North Korea. In September, the DPRK Permanent Representative to the United Nations stated in a letter to the President of the UN Security Council that “[r]eprocessing of spent fuel rods is at its final phase and extracted plutonium is being weaponized” and that “[e]xperimental uranium enrichment has successfully been conducted to enter into completion phase.” In November 2009, North Korea announced it had successfully completed the reprocessing of 8,000 spent fuels rods.

In November 2010, DPRK authorities disclosed to visiting American scientists a uranium enrichment facility and ongoing construction of a light-water reactor at Yongbyon. DPRK authorities stated that the enrichment facility contained about 2,000

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<sup>1</sup> The DPRK announced that it had conducted a test of a nuclear explosive device on October 9, 2006. The UN Security Council adopted UNSCR 1718 in response, imposing sanctions against the DPRK.

centrifuges, which was consistent with the scientists' observations, and that the facility was operating and producing LEU, which the scientists could not verify.

North Korea was in violation of its obligations under Articles II and III of the NPT and under its IAEA Safeguards Agreement before its announced withdrawal from the NPT in 2003. In addition, North Korea's continuing nuclear activities, including its uranium enrichment activities and construction of a small light-water reactor, are further violations of UNSCRs 1718 and 1874 and of the DPRK's commitments under the 2005 Joint Statement of the Six-Party Talks.

### **Compliance Discussions**

During the reporting period, the United States emphasized that North Korea continues to disregard its commitments under the 2005 Joint Statement and its obligations under UNSCRs 1718 and 1874. The United States made clear that North Korea cannot be a nuclear-weapon State as defined in the NPT, and that the United States remains committed to the 2005 Joint Statement and its goal of the verifiable denuclearization of the Korean peninsula in a peaceful manner. The United States also continued to encourage the international community to implement fully and transparently the UN sanctions relating to the North Korean nuclear issue. The IAEA reiterated that it has been unable to carry out any monitoring or verification activities in the DPRK since April 2009, and that the DPRK has not permitted the IAEA to implement safeguards in the DPRK since December 2002. In December 2010, the United States and other members of the IAEA BOG noted that the DPRK's construction of a uranium enrichment facility at Yongbyon is a violation of UNSCRs 1718 and 1874. The United States also noted that this activity was also a violation of the DPRK's commitments under the 2005 Joint Statement.

## **SYRIA**

### **FINDING**

Syria failed to declare and provide design information to the IAEA for the construction of the reactor at Al Kibar, which was destroyed in September 2007. In doing so, Syria failed to meet obligations under modified Code 3.1 of the Subsidiary Arrangements to its Safeguards Agreement. During the reporting period, Syria refused to cooperate with the IAEA's investigation into this matter<sup>2</sup> and also failed to clarify the origin of anthropogenic natural uranium particles found in samples taken at its Miniature Neutron Source Reactor. The particles were of a type not included in its declared inventory of nuclear material.

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<sup>2</sup> On June 9, 2011, following Syria's refusal to cooperate with the IAEA's investigation into this matter for over three years, the IAEA BOG adopted a resolution finding Syria in noncompliance with its obligations under its NPT Safeguards Agreement with the IAEA in the context of Article XII.C of the IAEA's Statute.

## BACKGROUND

Syria became a State Party to the NPT in 1968 and its NPT Safeguards Agreement entered into force in 1992. It had not signed the Additional Protocol as of the end of 2010.

*Al Kibar Site.* Until September 2007, Syria was building a covert nuclear reactor at Al Kibar (in the province of Dair Alzour) in Syria's eastern desert that would have been capable of producing plutonium. The reactor was destroyed on September 6, 2007, before it became operational. The reactor's intended purpose was apparently the production of plutonium, because the reactor was not configured for power production, was isolated from any civilian population, and was ill-suited for research. Following the reactor's destruction, Syria went to great lengths to clean up the site and to destroy evidence of what had existed at the site. By December, Syria had constructed a large building over the location where the reactor once stood. In April 2008, the United States provided information to the IAEA indicating that the installation destroyed at Al Kibar was a nuclear reactor being constructed with North Korean assistance. The IAEA began investigating Syria's compliance with its IAEA safeguards, but despite repeated requests, was not allowed by Syria to send inspectors to visit the Al Kibar site until June 2008.

During the reporting period, the IAEA continued to investigate the nature of the destroyed facility at the Al Kibar site. The IAEA noted that Syria had not cooperated with the IAEA since June 2008 on the unresolved issues related to the Al Kibar site and some other locations. Syria has maintained that the destroyed facility was a military installation and not involved in nuclear activities. As of the end of 2010, Syria had not provided information or access to allow the IAEA to resolve outstanding issues relating to the Al Kibar site, including the nature of the destroyed facility and the origin of the anthropogenic (man-modified chemically processed) natural uranium particles found in samples taken at the site. The particles are of a type not included in Syria's declared inventory of nuclear material. Moreover, Syria had failed to declare and provide design information to the IAEA for the construction of the Al Kibar reactor, despite being an NPT Party that implemented a safeguards agreement with the IAEA. In doing so, Syria failed to meet obligations under modified Code 3.1 of the Subsidiary Arrangements to its Safeguards Agreement.<sup>3</sup>

*Miniature Neutron Source Reactor (MNSR), Damascus.* The IAEA remained engaged with Syria during the reporting period in efforts to clarify the origin of anthropogenic natural uranium particles found in samples taken in 2008 and 2009 at the MNSR. The particles were of a type not included in Syria's declared inventory of nuclear material. The United States has called within the IAEA BOG for Syria to provide a full and complete accounting of all previously undeclared activities conducted at the

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<sup>3</sup> On June 9, 2011, the IAEA BOG adopted a resolution finding Syria in noncompliance with its obligations under its NPT Safeguards Agreement with the IAEA in the context of Article XII.C of the IAEA's Statute.

MNSR. In September 2010, the IAEA and Syria agreed upon a plan of action for resolving the outstanding issues relating to the MNSR.<sup>4</sup>

### **Compliance Discussions**

The United States and numerous other countries continued during the reporting period to urge Syria to cooperate fully with the IAEA to address all outstanding questions about Syria's clandestine nuclear activities. The Director General repeatedly urged Syria to engage with the IAEA to resolve outstanding issues, including cooperating with, and providing prompt access in support of, IAEA verification activities. Syria was also urged by others to bring into force the Additional Protocol to its Safeguards Agreement. The Director General sent a letter to the Syrian foreign minister in November 2010 requesting that Syria provide prompt access to relevant information and locations related to Al Kibar and underscoring to Syria the importance of cooperating with the IAEA.

Syria continued during the reporting period to reject concerns regarding its past activities at Al Kibar, but stated that it was committed to the NPT and to IAEA safeguards, and to cooperating with the IAEA.

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<sup>4</sup> In his introductory statement to the June 2011 BOG meeting, the IAEA Director General stated that Syria's statements concerning the previously unreported conversion activities at the MNSR and the origin of anthropogenic uranium particles are not inconsistent with the results of the IAEA's verification activities, and that this matter will be addressed in the routine implementation of safeguards.

## **TREATY ON OPEN SKIES**

The Treaty on Open Skies establishes a regime for the conduct of unarmed observation flights by States Parties over the territories of other States Parties. States Parties are allowed to utilize four types of sensors (optical panoramic and framing cameras, video cameras with real-time display, infra-red line-scanning devices, and sideways-looking synthetic aperture radar) during the observation flights. The Treaty was signed at Helsinki on March 24, 1992. The Treaty entered into force on January 1, 2002, and is of unlimited duration. As of December 31, 2010, 34 States Parties had signed and ratified the Treaty on Open Skies (Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Norway, Poland, Portugal, Romania, Russia, the Slovak Republic, Slovenia, Spain, Sweden, Turkey, Ukraine, the United Kingdom, and the United States).

This Report discusses three compliance issues involving the Russian Federation from January 1, 2009, to December 31, 2010.

### **COUNTRY ASSESSMENTS**

#### **RUSSIAN FEDERATION**

##### **FINDING – ACCESS TO KALININGRAD**

In July 2010, a U.S. Open Skies mission in the OC-135B was denied access to Khrabrovo Airfield in Kaliningrad. The reason cited by the local airport authority was excessive aircraft weight. The U.S. team protested but the issue was not resolved and the mission was aborted. During subsequent bilateral discussions, the United States provided assurances that the aircraft would not exceed runway weight-bearing limits and the issue was resolved. Another U.S. mission into Kaliningrad in October was successful and the United States now considers the matter closed.

##### **FINDING – AIRSPACE RESTRICTIONS**

Russia has restricted access to three areas: over Chechnya and nearby areas of southwestern Russia; in the UUP-33 area over Moscow below 3,600 meters altitude; and along the border of Russia with the Georgian regions of South Ossetia and Abkhazia.

Russia imposed restrictions over and near Chechnya in 2002 due to conflict in the area and purported safety of flight considerations. Russia claims that flight within UUP-33 over Moscow below 3,600 meters is prohibited due to safety of flight. Russia also claims that flight over Russia within 10 km of the border regions of South Ossetia and

Abkhazia is prohibited by the Open Skies Treaty. A provision in the Treaty prohibits flight within 10 km of a non-State Party. Russia claims that South Ossetia and Abkhazia are independent nations not party to the Treaty and, therefore, flight within 10 km of their borders is prohibited. This issue has been raised by the United States, Canada, Romania, and others multiple times in the Open Skies Consultative Commission (OSCC) and has not been resolved. Georgian representatives regard the Russian action a violation of Georgian sovereignty and are seeking future Russian compliance with this Treaty provision.<sup>1</sup>

## **BACKGROUND**

Paragraphs 1 and 2 of Article IV of the Treaty state that States Parties may use any of four sensor types to conduct observation flights. Additionally, Section II of Article VI of the Treaty states that the observation flight mission plan may provide for the observation of any point on the entire territory of the observed Party, including areas designated by the observed Party as hazardous airspace.

Analysis completed by the United States confirmed that UUP-33 was large enough to prevent States Parties from observing all portions of the area from outside of it, even with wide field of view panoramic cameras, nor do these restrictions allow the certified sensors of other sharing partner aircraft with minimum sensor altitudes less than 3,600 meters to observe all Russian territory in accordance with Paragraphs 1 and 2 of Article IV of the Treaty. The United States is able to obtain Treaty-allowed resolution imagery of the territory under UUP-33 airspace using its higher-altitude KA-91C panoramic camera, weather permitting. However, the United States is still not able to exercise its right to use the KS-87E framing camera to obtain the Treaty-allowed resolution of 30 cm on targets in the UUP-33 prohibited area.

Georgia is a State Party to the Treaty, and South Ossetia and Abkhazia are recognized as part of Georgia by all States Parties (including Russia until 2008). All States Parties except Russia believe that flights within 10 km of the continuous, internationally recognized border of Russia with Georgia, including South Ossetia and Abkhazia, are permitted.

As of December 31, 2010, Chechnya, UUP-33, and border-related airspace restrictions were still in effect.

### **Compliance Discussions**

The United States continues to utilize the OSCC and diplomatic means to highlight the negative impact of these airspace restrictions with the goal of Russia removing all airspace restrictions that negatively impact observation flight.

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<sup>1</sup> To register its concern, Georgia has chosen not to conduct a flight over Russia this year, but will allow Russia to conduct a flight over its territory.

## **FINDING – FIRST GENERATION DUPLICATE NEGATIVE FILM**

The United States notes that Russia's inability to provide a first generation duplicate negative of processed photographic film from Open Skies flights is not in compliance with its obligations under Sections II and IV of Article IX of the Treaty on Open Skies.

### **BACKGROUND**

Russia's film duplication equipment is not capable of producing a first generation duplicate negative. The United States has raised the concern with Russian film duplication capability and Russia's inability to produce first generation duplicate negatives.

There have been no changes since the August 2007 U.S.-hosted bilateral discussion with Russia on Open Skies implementation issues, during which Russia responded that it was unable to update equipment at its Kubinka airfield, but that it was planning to install new duplicating equipment and to purchase special copy film.

Section II of Article IX of the Treaty states that when only one original film negative is developed, the observed Party has the right to receive a complete first generation duplicate, either positive or negative, of the original film negative. Additionally, Section IV of Article IX of the Treaty states that a State Party shall have the right to request and receive from the observing Party copies of data collected by sensors during an observation flight. Such requests include the right to ask for duplicate negative film.

Consistent with the rights established in Sections II and IV of Article IX of the Treaty, the United States has requested that Russia provide duplicate negative film of imagery collected during Russian observation flights over the United States. However, in each case, Russia was able to provide only duplicate positive film because their media processing facility was not capable of producing a duplicate negative. As a result, the United States was not able to exercise its rights under Sections II and IV of Article IX. Analysis of a duplicate negative copy usually provides better results than a duplicate positive copy, thus the results of the observation flight analysis is not optimal.

### **Compliance Discussions**

During the reporting period, there was no compliance discussion with Russia on this issue.

## **PART IV: OTHER NATIONS' (INCLUDING SUCCESSOR STATES') COMPLIANCE WITH THEIR INTERNATIONAL COMMITMENTS**

### **MISSILE NONPROLIFERATION COMMITMENTS**

The **Missile Technology Control Regime (MTCR)** and the **Hague Code of Conduct Against Ballistic Missile Proliferation (HCOG; originally known as the International Code of Conduct Against Ballistic Missile Proliferation (ICOC))** are the key multilateral mechanisms addressing the proliferation of missiles and missile-related technology. In addition, the United States holds frequent bilateral discussions on nonproliferation issues, often with states that are not members of or parties to multilateral regimes. The United States has sought and received separate, bilateral political nonproliferation commitments from nations to limit their missile proliferation activities.

*Missile Technology Control Regime.* The MTCR is a voluntary arrangement among Partner countries sharing a common interest in controlling missile proliferation. The MTCR is not a treaty and it does not impose legally binding obligations on participating countries. Rather it is an informal political understanding among states that seek to limit the proliferation of missiles and missile technology. The MTCR Partners control exports of a common list of controlled items (the MTCR Equipment, Software, and Technology Annex, also referred to as the MTCR Annex) according to a common export control policy (the MTCR Guidelines). The Guidelines and Annex are implemented according to each country's national legislation and regulations. Membership in the MTCR has grown steadily since the Regime's creation in 1987, and 34 countries are now members.

*Hague Code of Conduct Against Ballistic Missile Proliferation.* On November 25, 2002, the HCOG was launched in The Hague, Netherlands. As of November 15, 2010, a total of 131 countries had subscribed to the HCOG, the most recent being Iraq, which subscribed in August 2010. The HCOG intends to create a widely subscribed international predisposition against ballistic missile proliferation. The Code consists of a set of broad principles, general commitments, and modest confidence-building measures. It is a voluntary political commitment, not a treaty, and is open to all countries. The Code is intended to supplement, not supplant, the MTCR.

## **COUNTRY ASSESSMENTS**

### **CHINA**

#### **FINDING**

In 2009-2010, Chinese companies continued to supply missile programs in countries of concern. The United States imposed sanctions pursuant to U.S. domestic laws and Executive Orders on several Chinese companies in 2009 for proliferation activities. The United States notes that China made a November 2000 Commitment not to assist “*in any way, any country in the development of ballistic missiles that can be used to deliver nuclear weapons (i.e., missiles capable of delivering a payload of at least 500 kilograms to a distance of at least 300 kilometers).*”

### **LIBYA**

#### **FINDING**

Available information indicates Libya is acting consistently with the commitment it made publicly in December 2003 that Libya would “limit itself to missiles of range standards agreed upon in the MTCR control system.”

## **MORATORIA ON NUCLEAR TESTING**

By September 1996, each of the nuclear-weapon States (NWS) under the NPT (China, France, the Russian Federation, the United Kingdom, and the United States) had declared a nuclear testing moratorium and had signed the Comprehensive Nuclear-Test-Ban Treaty (CTBT), which has not yet entered into force. The scope of each moratorium has not been publicly defined. While it is difficult to assess the compliance of a given state with its own moratorium, when the scope or meaning of a moratorium is unclear, U.S. assessments are based on the U.S. position of what constitutes a nuclear explosive test moratorium.

**UNCLASSIFIED**

**Condition (5) (C) Report**

**COMPLIANCE WITH  
THE TREATY ON CONVENTIONAL ARMED FORCES  
IN EUROPE**



**August 2011  
Prepared by the U.S. Department of State**

**UNCLASSIFIED**

## **REPORT ON TREATY COMPLIANCE**

This Report on Compliance (hereinafter referred to as the “Report”) with the Treaty on Conventional Armed Forces in Europe (CFE) of November 19, 1990 (hereinafter referred to as the “Treaty”) is submitted pursuant to Condition (5)(C) of the Senate Resolution of Advice and Consent to Ratification of the May 31, 1996, Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe of November 19, 1990 (“the CFE Flank Document”) and covers December 1, 2009, through November 30, 2010.

Condition (5)(C) requires the President to certify, *inter alia*, annually those countries that are determined to be in compliance with the CFE Treaty. For those countries not certified, it requires an identification and assessment of all compliance issues arising with regard to the adherence of each country to its Treaty obligations, a description of steps the United States has taken with regard to these compliance issues, and each country’s response. Finally, Condition (5)(C) requires a determination of the military significance and broader security risks arising from compliance issues in the cases of countries not certified.

### **A. STATES PARTIES CERTIFIED TO BE IN COMPLIANCE WITH THE TREATY**

The States Parties certified to be in compliance with the Treaty and its associated documents for 2010 are: Belgium, Bulgaria, Canada, the Czech Republic, Denmark, France, Georgia, Germany, Greece, Hungary, Iceland, Italy, Kazakhstan, Luxembourg, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Spain, Turkey, the United Kingdom, and the United States.

### **B. COMPLIANCE ISSUES AND STEPS TAKEN WITH REGARD TO STATES PARTIES NOT CERTIFIED**

The States Parties not certified as being in compliance with the Treaty and its associated documents for 2010 are: Armenia, Azerbaijan, Belarus, Russia, and Ukraine. This Report reviews in detail new developments and information during 2010. For previously reported and ongoing compliance issues, refer to earlier Condition (5)(C) Reports.

There are significant differences in the range of compliance issues identified for each State Party not certified. Certification has not been withheld from any State Party due to minor technical implementation problems or concerns, although

some such problems or concerns are also identified and assessed. This Report also includes issues that do not conclusively indicate noncompliance, but bear continued attention in the course of Treaty implementation. It should be noted that some compliance issues that have resulted in a failure to be certified are rooted in political circumstances unrelated to the Treaty. Information on Treaty compliance issues may also be found in earlier reports on *Adherence to and Compliance with Arms Control, Nonproliferation and Disarmament Agreements and Commitments* (hereafter referred to as the “Compliance Report”).

## **Armenia**

Although Armenian officials have expressed their full support for the Treaty, Armenia has failed to comply with a number of its Treaty obligations. Compliance issues, all previously reported, include: (1) declared reduction liabilities that are not in accord with Treaty requirements, with consequent failure to complete necessary reductions; (2) apparent failure to report Treaty-limited equipment (TLE) received from Russia; (3) reported stationing of forces on the territory of Azerbaijan without Azerbaijani consent, (4) apparent failure to declare all MT-LBu variant armored personnel carrier (APC) look-alikes; and (5) possible unreported holdings of conventional armaments and equipment subject to the Treaty (CAEST). These compliance issues are not discussed in this 2010 report, but are detailed in earlier Condition (5)(C) Reports. It is unclear whether progress can be made on the first three issues outside the context of a political settlement of the Nagorno-Karabakh (N-K) conflict, which is the focus of the Organization for Security and Co-operation in Europe (OSCE) Minsk Group’s mediation efforts (co-chaired by the United States, Russia, and France).

Armenia’s failure either to notify or to complete its required Treaty reduction obligations affects the collective obligations of the eight USSR successor states. See the Collective Obligations section and earlier Compliance Reports for discussion of this issue.

### **Compliance Issues With New Information in 2010**

While no new compliance issues for Armenia have been identified in 2010, the issues identified above remain unresolved.

### **Steps the United States Has Taken and Armenian Response in 2010**

In 2010 (through November 30), the United States conducted no inspections of Armenian forces. NATO Allies conducted five inspections, of which three included a U.S. inspector. As appropriate, the United States and NATO Allies have continued to raise the continuing compliance issues outlined above in bilateral discussions, but Armenia has not changed any of its positions. This 2010 Report does not address inspections and responses in previous years; they are addressed in earlier Condition (5)(C) Reports.

The N-K conflict appears to be the underlying cause of most of Armenia's Treaty compliance issues, as well as a large portion of the issue of uncontrolled and unaccounted for equipment limited by the Treaty (UTLE). At the OSCE Summit in Astana, Kazakhstan on December 1, 2010, the Heads of Delegation of the OSCE Minsk Group Co-Chair countries (the President of the Russian Federation, the Prime Minister of France, and the Secretary of State of the United States), the President of Azerbaijan, and the President of Armenia agreed that the time had come for more decisive efforts to resolve the N-K conflict. In this context, they recalled the joint statements of the presidents of Azerbaijan and Armenia, with the President of the Russian Federation, most recently on October 27, 2010, in Astrakhan, Russia, as well as the statements of Presidents Medvedev, Sarkozy, and Obama, at L'Aquila, Italy, on July 10, 2009, and at Muskoka, Canada, on June 26, 2010.

## **Azerbaijan**

Although Azerbaijan has expressed its full support for the Treaty, Azerbaijan has not fulfilled some of its Treaty obligations and has stated that security issues continue to affect Azerbaijan's implementation. Azerbaijan continues to maintain that it could not carry out some Treaty obligations so long as the N-K conflict is unresolved and part of Azerbaijan's territory is under foreign occupation. Compliance issues, all previously reported, include: (1) exceeding its TLE limits when they went into effect in November 1995 through January 1, 2000, and from January 1, 2007, to the present; (2) unilateral suspension of certain Treaty notifications and failure to report correctly certain objects of verification (OOV), and (3) failure to notify and complete a reduction obligation. The first compliance issue is discussed in this 2010 Report, the others are detailed in earlier Condition (5)(C) Reports.

Azerbaijan's failure either to notify or to complete its required reductions affects the collective obligations of the eight USSR successor states. See the

Collective Obligations section and earlier Compliance Reports for discussion of this issue.

### **Compliance Issues With New Information in 2010**

**1. Compliance with Limits.** Previously declared equipment totals that exceeded Azerbaijan's overall limits of TLE – a contravention of Treaty limits – continued through 2010. In its data as of January 1, 2010, Azerbaijan declared equipment totals that exceeded its overall limits by over 300 pieces of TLE (over 160 tanks and about 140 artillery pieces in excess of Azerbaijan's limits – an increase of over 20 artillery pieces over the excess declared the previous year). In December 2010, Azerbaijan reported it had received an additional 11 Mi-24 attack helicopters and five Su-25 combat aircraft during 2009, and included the new equipment (less one Su-25 which was reported to have crashed) in its CFE data as of January 1, 2011.

### **Steps the United States Has Taken and Azerbaijani Response in 2010**

In 2010 (through November 30), the United States conducted one inspection in Azerbaijan. NATO Allies conducted three inspections, of which one included a U.S. inspector. This 2010 Report does not address inspections and responses in previous years; they are addressed in earlier Condition (5)(C) Reports.

Over the years, the United States and NATO Allies have continued to raise previous compliance issues in plenary and working group sessions of the Treaty's Joint Consultative Group (JCG) as well as in bilateral discussions. In the Forum for Security Cooperation (FSC) on October 13, 2010, Belgium, on behalf of the European Union, delivered a statement of concern over the export of arms and ammunition to Azerbaijan, and Armenia noted that this had resulted in Azerbaijan exceeding its CFE holdings. Azerbaijan said its import practices were within its rights to prepare for its own national defense. Azerbaijan has taken some actions apparently to eliminate overages and to carry out some reductions, but has continued to insist that security concerns limit its ability to implement Treaty provisions, including Azerbaijan's unilateral suspension of certain CFE notifications, until the N-K conflict is resolved. Azerbaijan has not further drawn down these excess items during the period covered by this Report, and the overages have increased. At the OSCE Summit in Astana, Kazakhstan on December 1, 2010, the Heads of Delegation of the OSCE Minsk Group Co-Chair countries (the President of the Russian Federation, the Prime Minister of France, and the Secretary of State of the United States), the President of Azerbaijan, and

the President of Armenia agreed that the time had come for more decisive efforts to resolve the N-K conflict. In this context, they recalled the joint statements of the presidents of Azerbaijan and Armenia, with the President of the Russian Federation, most recently on October 27, 2010, in Astrakhan, Russia, as well as the statements of Presidents Medvedev, Sarkozy, and Obama at L'Aquila, Italy, on July 10, 2009, and at Muskoka, Canada, on June 26, 2010.

## **Belarus**

Although Belarus has stated its full support for the Treaty, there continue to be longstanding concerns about Belarus' fulfillment of some Treaty obligations. The primary compliance issue, previously reported, has been recurrent problems with site access and site diagrams. This compliance issue is not discussed in this 2010 Report, but is detailed in earlier Condition (5)(C) Reports.

In addition, see the Collective Obligations section and earlier Compliance Reports for discussion of the collective shortfall issue.

### **Compliance Issues With New Information in 2010**

While no new compliance issues for Belarus have been identified in 2010, the issue identified above remains unresolved.

### **Steps the United States Has Taken and Belarusian Response in 2010**

In 2010 (through November 30), the United States conducted no inspections of Belarusian forces.<sup>1</sup> NATO Allies conducted five quota inspections, of which three included a U.S. inspector, and five above quota, paid inspections, of which two included a U.S. inspector. The United States and NATO Allies have continued to raise compliance issues in plenary and working group sessions of the JCG as well as in bilateral discussions. At the 2006 CFE Review Conference, the Belarusian representatives disagreed with the U.S. interpretation of the definition of a declared site and stated that the boundaries of a declared site were determined by the host state and were not determined by the outermost man-made or natural boundaries of the site. The United States has pursued this issue subsequently with Belarus without effect.

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<sup>1</sup> Belarus allows other States Parties to conduct CFE inspections above the number it is required to accept, as long as the inspecting country pays the entire cost of inspection.

## Russia

Although Russia is a State Party to the Treaty and had previously emphasized its support for the Treaty, Russia's continued "suspension"<sup>2</sup> of implementation of the Treaty as of December 12, 2007, casts serious doubt on Russia's commitment to the current Treaty, although Russia has stated it does not anticipate increases above CFE limits. These concerns were compounded in August 2008 by Russia's actions during the conflict in Georgia. Since December 12, 2007, Russia has failed to comply with its reporting obligations under the Treaty and related commitments. Russia has provided no annual data, semiannual flank data, annual notifications, quarterly notifications regarding equipment holdings at the Kushchevskaya armor maintenance facility, periodic Treaty notifications of permanent changes in the organizational structure of Russia's conventional armed forces, or periodic notifications of changes of 10 percent or more in TLE assigned to units. Additionally, Russia has declined all inspections of Russian forces or on Russian territory.

Russia's "suspension" of implementation of Treaty provisions since 2007 has resulted in non-compliance with Treaty obligations. Compliance issues, all previously reported, are: (1) Russian "suspension" of its implementation of the Treaty; (2) stationing forces without the consent of the host state; (3) exceeding flank limits; (4) the apparent shipment of TLE into Armenia between 1994 and 1996 without proper notifications; (5) improper designation of ACVs as "ambulances;" (6) failure to declare look-alikes that are accountable under the Treaty's Protocol on Existing Types of Conventional Armaments and Equipment (POET); (7) exceeding overall limits for holdings in active units; and (8) improperly reporting some armored infantry fighting vehicles (AIFVs) as AIFV look-alikes and subsequently failing to report them at all. In addition, these previously reported compliance issues were related to inspections: (9) denial of full access during inspections prior to 2001 and improper site diagrams; (10) refusal in 2006 to allow a U.S. inspection to proceed as a supplementary rather than as a quota inspection; and (11) denial in 2007 of a U.K. supplementary inspection on improper grounds. The first three compliance issues are discussed below, the remaining issues are discussed in earlier Condition (5)(C) Reports.

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2 The remaining text in this Report refers to Russia's action as a suspension of implementation of the Treaty, as a decision to suspend observation of Russia's Treaty obligations, or as a "suspension" in quotation marks, since the Russian action is not viewed as justified under the circumstances based on customary international law or by the terms of the Treaty.

In addition, Russia shares the collective obligation of the eight USSR successor states that remains unfulfilled. See the Collective Obligations section and earlier Compliance Reports for discussion of this issue.

### **Compliance Issues With New Information in 2010**

While no new compliance issues for Russia have been identified in 2010, the issues identified above remain unresolved.

**1. Russian “Suspension” of Its Implementation of the Treaty.** On July 14, 2007, Russia transmitted to the Government of the Kingdom of the Netherlands, the Treaty Depositary, a notification of Russia’s intent to suspend its observance of its Treaty obligations to be effective in 150 days. Since December 12, 2007, and continuing into late 2010, against its Treaty obligations, Russia rejected all inspections and failed to provide Treaty-required annual data<sup>3</sup> and all other Treaty-required information. While the United States and NATO Allies, as well as all other States Parties, have continued to observe their Treaty obligations, Russia’s failure to do so is eroding the viability and effectiveness of the Treaty regime and putting its future in doubt.

The United States has concluded that “suspension,” while an option under certain circumstances under international law, is not provided for in the Treaty and that the Russian “suspension” is not justified under customary international law by the circumstances cited by Russia. The “suspension” issue has been complicated by Russia’s military action in Georgia and its related Treaty consequences.

The United States made clear its legal position that the stated concerns raised by Russia about the Treaty did not provide a sufficient justification for Russia to “suspend” its implementation of the Treaty. All NATO Allies have made clear that Russia’s “suspension” was a unilateral measure not provided for under the terms of the Treaty.

**2. Stationing Forces without Consent of the Host State.** The presence of Russian forces in Moldova and Georgia without host state consent has raised important concerns for several years.

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3 Information required but not provided includes Russia’s annual CFE data as of January 1, 2008, 2009, and 2010 and associated annual notifications - its flank data as of July 1, 2008, 2009, and 2010; quarterly notifications regarding equipment holdings at the Kushchevskaya armor maintenance facility, and periodic notifications of permanent changes in the organizational structure of Russia’s conventional armed forces, or of changes of 10 percent or more in TLE assigned to units.

## **Georgia**

Russia's decision in August 2008 to introduce additional military forces into Georgia, a large part of which have since remained -- and Russia's subsequent recognition of Abkhazia and South Ossetia as independent states -- was inconsistent with the acknowledged obligation of the States Parties recalled in the Preamble of the Treaty, "to refrain in their mutual relations, . . . from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes and principles of the Charter of the United Nations." In addition, Russia's military action temporarily increased the amount by which Russia already exceeded the original and revised flank limits under the Treaty, but not significantly. Russian military presence at facilities in South Ossetia and Abkhazia continues. In October 2010, Russia withdrew from the Georgian village of Perevi, which was a step toward Russian withdrawal to its pre-August 2008 positions, but this obligation remains unfulfilled. Furthermore, military and security officials in Russia's Southern Military District were quoted in the Russian press as saying that Russian 300-mm 9A52 "Smerch" multiple rocket launch systems, SS-21 "Tochka-U" short-range ballistic missile systems, and possibly 220-mm 9P140 "Uragan" multiple rocket launch systems had been moved to South Ossetia, which if accurate suggests that this issue will not be resolved in the near future. Since the United States, NATO Allies, Georgia, and all CFE States Parties except Russia consider the regions of Abkhazia and South Ossetia to be part of the internationally recognized territory of Georgia, this stationing of forces on Georgian territory without Georgia's consent would be a continuing violation of Article IV, paragraph 5, of the Treaty.<sup>4</sup>

## **Moldova**

Russia completed the withdrawal or destruction of all its declared TLE in Moldova by the December 31, 2001, deadline set at the 1999 OSCE Summit in Istanbul.<sup>5</sup>

Since 2005 the Moldovan government has repeatedly made clear that it wants Russian military forces to be withdrawn and replaced with an international (OSCE) peacekeeping force, or an unarmed multinational civilian monitoring

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4 While the Treaty establishes numerical limits on TLE and not on military personnel, the Article IV, paragraph 5 prohibition on stationing without host state consent applies to "conventional armed forces" in general.

5 The Treaty does not exempt peacekeeping forces from its prohibitions, restrictions, or limits.

presence. In an October 2009 JCG meeting, the Moldovan Ambassador reiterated that the withdrawal and disposal process should cover not only the Russian contingent of the peacekeeping presence, but the Operational Group of Russian Forces, its ammunition stockpiles, and the Treaty-limited equipment transferred to the Transnistrian regime. He called for dialogue regarding the replacement of the military forces in the security zone with a multinational civilian mission under an international mandate.

Several OSCE states, including the United States, have indicated their intention to support the OSCE effort to assist with the costs of the withdrawal via a voluntary fund. Russian authorities in the past have told the OSCE Mission that this assistance is vital to the costly process of removing and disposing of munitions.

## **Ukraine**

Previously reported was an overage of combat aircraft above the number that a bilateral agreement with Ukraine permits Russia to hold in its naval forces in Ukraine. The apparent overage of combat aircraft in the Russian Vienna Document 1999 (VD99) data as of January 1, 2009, was not carried over into the Russian VD99 data as of January 1, 2010. Accordingly, there is no current declared overage in Russian combat aircraft above the cited bilateral limit.

**3. Exceeding Flank Limits.** According to Russia's annual data as of January 1, 2007, its flank data as of July 1, 2007, and Russian notifications up to December 12, 2007, Russia continued to exceed most of the current legally binding limits for both the original and revised flank zones, but was within the future limits for the flank zone under the Agreement on Adaptation of the Treaty on Conventional Armed Forces in Europe (referred to as the "Adapted Treaty")<sup>6</sup>. Reporting from the Russian press during 2008 indicated that most of the TLE in the holdings of two units in Russia's Adapted Treaty flank zone were transferred to locations in the Abkhazia and South Ossetia regions of Georgia. Russia's data as of January 1, 2010, that was provided under the Global Exchange of Military Information indicated the presence of a considerable amount of TLE -- almost certainly originating from these two units -- in Abkhazia and South Ossetia. If this information is accurate, then most of the holdings of TLE of these two units would no longer be located in Russia's Adapted Treaty flank zone. Thus, it is likely that

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<sup>6</sup> The "Adapted Treaty" is not yet in force and its provisions do not apply to the States Parties. Reference is made in parts of this Report to Adapted Treaty flank numerical limits due to political requirements that Russian forces adhere to those future, but not yet legally applicable, limits.

Russia's holdings in the Adapted Treaty flank zone are below its Adapted Treaty limits. The information available does not indicate that there were any Russian overages above Adapted Treaty flank limits on Russian territory.<sup>7 8</sup>

### **Steps the United States Has Taken and Russian Response in 2010**

In 2010 (through November 30), the United States issued 12 and NATO Allies issued 19 notifications of intent to inspect Russian forces in the Russian Federation or stationed elsewhere in the area of application (AoA). In each case, Russia responded with a notification "denying" the inspection on the basis of Russia's "suspension" of implementation of the Treaty.<sup>9</sup> All Russian refusals of inspections by members of NATO were regularly raised in the JCG in statements objecting to the refusal and calling on Russia to reverse its decision to "suspend" its implementation of the Treaty. Since Russia "suspended" its implementation of the Treaty through November 30, 2010, Russia has rejected 90 inspection notifications by the United States and NATO Allies.

Through late 2010, Russian officials have made clear that Russia will only consider entry into force of an Adapted Treaty, not a return to implementation of the existing Treaty, which they indicated they regard as no longer in Russia's security interest. However, Russian President Medvedev stated on December 1, 2010, at the OSCE Astana Summit that, "We hope too to finally break the deadlock on the issue of the conventional arms control regime. This is not just our hope but is something we will work on actively, helping to find solutions to these issues."

The United States and NATO Allies have responded to Russia's decision to "suspend" implementation of the Treaty with diplomatic engagement at the most senior levels. Even before Russia implemented its "suspension" in 2007, the United States, supported by NATO Allies and other concerned States Parties

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7 Active-unit overages were significantly increased in 1999 due to the conflict in Chechnya and because the new Russian data declared all flank TLE to be in active units, the limits for which are lower now than under the future limits of the Adapted Treaty. In this and other matters, Russia appears to have acted as if the Agreement on Adaptation (the "Adapted Treaty") had already entered into force and modified ("adapted") the Treaty, but it has not. There is no authority to apply the Agreement provisionally in whole or in part; no State Party may unilaterally apply provisions not yet in force.

8 These overage figures do not take into account Russian notifications of temporary deployments in Armenia, Ukraine, and on Russian territory in the original flank (totaling over 225 tanks, almost 600 ACVs, and close to 250 artillery pieces).

9 Under the Treaty's Protocol on Inspection, no State Party has the right to refuse a declared site inspection (unless it would result in too many inspections on the territory of one State Party at the same time), and declared site inspections can only be delayed in cases of *force majeure*.

including Georgia and Moldova, developed and presented to Russia a package of steps addressing a range of issues and calling for parallel actions by NATO on ratification of the Adapted Treaty and by Russia on fulfillment of remaining Istanbul commitments. NATO Allies affirmed their support for the package in every high-level NATO meeting through 2009. While U.S.-Russia discussions of the package were professional and comprehensive, Russian authorities did not offer flexibility in response.

NATO Allies have regularly registered in public statements their concern about Russia's "suspension," including at NATO's Bucharest Summit in April 2008 and the related summit meeting of the NATO-Russia Council, and the April 2009 NATO Strasbourg/Kehl Summit.

In 2010, diplomatic engagement on Russia's CFE obligations continued and intensified. On February 2, Secretary of State Hillary Rodham Clinton announced the appointment of Ambassador Victoria Nuland as Special Envoy for Conventional Armed Forces in Europe with the task of developing ideas to modernize conventional arms control structures in Europe and to consult closely with our NATO Allies and European partners, including Russia. In June 2010, NATO Allies, led by the United States, presented Russia and the other seven CFE Treaty States Parties with a proposal to develop a framework agreement that would serve as the basis for negotiations in 2011 to strengthen and modernize the conventional arms control regime in Europe. Between June and December of 2010, the United States and Russia held seven bilateral meetings to discuss a possible framework agreement and follow-on negotiations to modernize the CFE Treaty, and all CFE States Parties and the six NATO Allies not party to the Treaty met "at 36" in Vienna on six occasions. While no agreement was reached by the end of November 2010 on a framework, Russia showed new flexibility on key issues and all participants agreed to continue work in 2011. However, the issue of Russia's continuing "suspension" of CFE Treaty obligations remains unresolved.

The November 2010 NATO Lisbon Summit Declaration welcomed progress and encouraged the 36 participating nations to redouble efforts to conclude a principles-based framework to guide negotiations in 2011. The Declaration stated that, "The results of our work in the coming weeks and months will guide our future decisions on continued implementation of CFE obligations, given that, as we said at the Strasbourg/Kehl Summit, the current situation, where NATO CFE Allies implement the Treaty while Russia does not, cannot continue indefinitely."

The European Union (EU), its member states, and many other states protested the 2008 Russian military action in Georgia and the subsequent Russian recognition of the independence of South Ossetia and Abkhazia. Reports in the Russian press quoting Russian military and security officials confirming the transfer of additional weapons systems to the separatist regions, suggest that this issue will not be resolved in the near future.

Over the years, the United States and NATO Allies have continued to raise longstanding compliance issues bilaterally and in a variety of multilateral fora, including: plenary and working group sessions of the JCG (including in detail at the second CFE Review Conference in spring 2001 and the third CFE Review Conference in spring 2006); OSCE and NATO/NATO-Russia Ministerial meetings; and NATO High-Level Task Force (HLTF) meetings with Russia; and in the NATO-Russia Council. Russian responses to questions on compliance have varied, but they generally have tried to deflect U.S. concerns. Often they have resurrected unsubstantiated allegations about U.S. and NATO non-compliance. From 2007 through 2010, other longstanding issues were not pursued as discussion focused on those related to Russia's "suspension."

## **Ukraine**

Ukraine has stated its full support for the Treaty and has substantially complied with the Treaty. Compliance issues, all previously reported, include: (1) exceeding some of its limits on holdings of equipment in active units; and (2) an unfulfilled obligation for Naval Infantry/Coastal Defense (NI/CD)-related reductions. The first compliance issue is described below. These compliance issues affect the collective obligations of the eight USSR successor states. See the Collective Obligations section and earlier Compliance Reports for discussion of this issue.

### **Compliance Issues With New Information in 2010**

**1. Limits on Equipment in Active Units.** From 1996 through 2003 Ukraine exceeded several of its notified limits for holdings of TLE in active units both in the revised flank and the revised non-flank areas, according to its data declarations. In the revised non-flank area, Ukraine's data declaration as of January 1, 2004, showed Ukraine within its notified limits for holdings of TLE in active units for the first time. According to its data as of January 1, 2008, Ukraine showed an excess of 33 pieces in its reported holdings of artillery in active units in

the revised non-flank area. Ukraine decreased this excess as of January 1, 2009, to nine pieces of artillery--and as of January 1, 2010, to one piece of artillery. In the revised flank area, Ukraine's data as of January 1, 2010, showed Ukraine within its notified limits for holdings of TLE in active units.

### **Steps the United States Has Taken and Ukrainian Response in 2010**

In 2010 (through November 30), the United States conducted one quota inspection, one supplementary inspection, and four paid above-quota inspections of Ukrainian forces. NATO Allies conducted 11 quota inspections in Ukraine, of which five involved participation by U.S. inspectors. NATO Allies also conducted four paid, above-quota inspections in Ukraine, of which two involved participation by U.S. inspectors. NATO Allies also conducted an additional five inspections of Ukrainian forces under bilateral agreements but using CFE procedures, of which two involved U.S. inspectors. The United States and NATO Allies have continued to raise compliance issues in plenary and working group sessions of the JCG as well as in bilateral discussions.

### **Collective Obligations**

The collective obligation of the eight USSR successor states that became CFE States Parties has not yet been fulfilled, as agreed to in the 1992 Tashkent Agreement and reaffirmed at the Extraordinary Conference in Oslo in 1992, to declare reduction liabilities and to complete reductions that will, in the aggregate, be no less than what the USSR would have had to declare and to complete. In addition, Russia and Ukraine have a shared NI/CD reduction. This shared obligation remains unfulfilled on the part of Ukraine. See earlier Compliance Reports for further discussion of collective obligations.

### **C. MILITARY SIGNIFICANCE AND BROADER SECURITY RISKS OF COMPLIANCE CONCERNS**

None of the compliance concerns identified and discussed in this Report are militarily significant to the United States or to NATO as a whole. However, the seriousness of the current compliance situation with regard to Russia's "suspension" of implementation cannot be overstated. Russia's "suspension" has eroded the implementation regime of the Treaty and undermined the cooperative approach to security that has been a core of the NATO-Russia relationship and European security for nearly two decades. The questions of Armenian unreported

equipment holdings, unreported shipments of TLE into Armenia, and Azerbaijani overages may be militarily significant to those two states, especially in the context of the N-K conflict. At a minimum, any Russian force stationed without the consent of the host State Party has political and military significance to the state in which that force is stationed. While not a direct military threat to the United States or NATO, the Russian military action in Georgia and Russia's subsequent recognition of the independence of South Ossetia and Abkhazia undermine conventional arms control Treaties and agreements, which were already weakened by Russia's "suspension" of Treaty obligations, and erode the security situation generally within the AoA. Notwithstanding military significance, it is the policy of the United States that all violations of arms control agreements should be challenged and corrected, lest governments subject to such obligations conclude that they may be disregarded at will.

**UNCLASSIFIED**

## **Condition (10) (C) Report**

# **COMPLIANCE WITH THE CONVENTION ON THE PROHIBITION OF THE DEVELOPMENT, PRODUCTION, STOCKPILING AND USE OF CHEMICAL WEAPONS AND ON THEIR DESTRUCTION**



**August 2011**  
**Prepared by the U.S. Department of State**

**UNCLASSIFIED**

This Report is submitted consistent with Condition (10) (C) of the Resolution of Advice and Consent to Ratification of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (CWC). The Convention was ratified by the United States on April 25, 1997, and entered into force on April 29, 1997.

Condition (10) (C) provides as follows:

Annual reports on compliance: The President shall submit on January 1 of each year to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives a full and complete classified and unclassified report setting forth --

(i) a certification of those countries included in the Intelligence Community's (IC) Monitoring Strategy, as set forth by the Director of Central Intelligence's Arms Control Staff and the National Intelligence Council (or any successor document setting forth intelligence priorities in the field of the proliferation of weapons of mass destruction) that are determined to be in compliance with the Convention, on a country-by-country basis;

(ii) for those countries not certified pursuant to clause (i), an identification and assessment of all compliance issues arising with regard to the adherence of the country to its obligations under the Convention;

(iii) the steps the United States has taken, either unilaterally or in conjunction with another State Party--

- to initiate challenge inspections of the noncompliant party with the objective of demonstrating to the international community the act of noncompliance;
- to call attention publicly to the activity in question; and
- to seek on an urgent basis a meeting at the highest diplomatic level with the noncompliant party with the objective of bringing the noncompliant party into compliance;

(iv) a determination of the military significance and broader security risks arising from any compliance issue identified pursuant to clause (ii); and

(v) a detailed assessment of the responses of the noncompliant party in question to action undertaken by the United States described in clause (iii).

The CWC imposes a number of basic obligations upon States Parties. Under the "general obligations" provisions of Article I, States Parties undertake never to develop, produce, otherwise acquire, stockpile, or retain chemical weapons, or to transfer them to anyone, directly or indirectly. Article I also obliges Parties "never under any circumstances" to use chemical

weapons, engage in “military preparations” for their use, or “to assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention.” Additionally, each State Party must destroy all chemical weapons (CW) in its possession, under its jurisdiction or control, or that it abandoned in another country, and it must destroy or convert all its chemical weapons production facilities (CWPFs) that it owns or possesses or are under its jurisdiction or control. Parties are also obliged not to use riot control agents (RCAs) as a method of warfare.

Article III imposes additional obligations, specifically by requiring the submission of detailed declarations of CW stockpiles, production facilities, other related facilities (e.g., laboratories and test and evaluation sites), and types of RCAs possessed. A State Party is required to declare, *inter alia*, whether it:

- owns or possesses any CW, or whether there are any CW located in any place under its jurisdiction or control;
- has on its territory old (OCW) or abandoned chemical weapons (ACW), or has abandoned CW on the territory of another State;
- has or has had any CWPF under its ownership or possession, or that is or has been located in any place under its jurisdiction or control at any time since January 1, 1946;
- has transferred or received directly or indirectly any equipment for the production of CW since January 1, 1946;
- has any facility or establishment under its ownership or possession, or located in any place under its jurisdiction or control, that has been designed, constructed, or used since January 1, 1946, primarily for the development of CW; and
- holds chemicals for riot control purposes.

Countries that were original States Parties to the CWC were required to submit their initial data declaration not later than 30 days after entry into force. Countries that ratified after the CWC entered into force, or acceded, became States Parties 30 days after the deposit of their instrument of ratification or accession and are required to submit their initial data declaration 30 days after becoming a State Party. Articles IV and V, and the corresponding parts of the Verification Annex, provide detailed requirements governing the implementation of the obligations on the destruction of CW and CWPFs.

Article VI of the CWC makes clear that each State Party has “the right, subject to the provisions of this Convention, to develop, produce, otherwise acquire, retain, transfer and use toxic chemicals and their precursors for purposes not prohibited under this Convention.” It thus makes clear that, even if the formal declaration and verification provisions of the CWC are followed, States Parties have no right to have or to deal in toxic chemicals or their precursors if their purpose in so doing is one that is prohibited under this Convention (e.g., to acquire chemical weapons or in any way to assist, encourage, or induce another to do so). Article VI

also imposes specific obligations with respect to controlling specific chemicals listed in Schedules 1, 2, and 3 of the Annex on Chemicals – as well as facilities related to such scheduled chemicals – and subjects these chemicals to verification measures provided in the Convention’s Verification Annex.

Article VII of the CWC requires that each State Party, in accordance with its constitutional processes, adopt the necessary measures to implement its obligations under the Convention. These measures shall prohibit natural and legal persons anywhere on a State Party’s territory or in any other place under its jurisdiction as recognized by international law from undertaking any activity prohibited to a State Party. A State Party is also required to enact penal legislation with respect to such activity. The United States continues to play a key role in pursuing compliance in this area through the Organization for the Prohibition of Chemical Weapons’ (OPCW) Article VII Action Plan, agreed by States Parties at the Eighth Session of the Conference of the States Parties (CSP-8) in 2003. The United States has worked hard in providing assistance to other countries in an effort to reach the goal of the Action Plan, which is to have all States Parties establish a National Authority, enact implementing legislation, including penal measures, and establish administrative measures (e.g., submit declarations and related documentation required by the CWC). Follow-up plans were agreed to by CSPs-10 through 13, setting specific actions to ensure the fulfillment of Article VII obligations by all States Parties to the Convention.

The OPCW was established pursuant to the CWC in order, among other things, to “ensure the implementation of its provisions, including those for international verification of compliance with it.” Under Article VIII, the CSP is authorized to “review compliance” with the CWC, and is to “[t]ake the necessary measures to ensure compliance with this Convention and to redress and remedy any situation which contravenes the provisions of this Convention, in accordance with Article XII.” Article XII, in turn, provides that the CSP may, *inter alia*, “restrict or suspend” a violator State’s “rights and privileges” under the CWC until compliance resumes. In “cases of particular gravity,” the CSP can bring the issue to the attention of the United Nations Security Council and General Assembly.

For its part, both as a matter of national policy and as a guide to national policy, the United States undertakes its own independent review – based upon the best available information, including intelligence information – of the compliance of CWC States Parties with their obligations under the Convention. The United States believes that States Parties should be held to their obligations under the CWC, and places a high premium upon their compliance both with specific detailed declaration and implementation provisions (e.g., Articles III, IV, V, and VII) and with the “general obligations” of Article I.

U.S. compliance assessments under the CWC focus upon the degree to which States Parties fulfill not only their detailed declaration and destruction/conversion obligations under Articles III through V, but also their “general obligations” under Article I. Information tending to show that CW have actually been used, or that a State Party has helped or encouraged anyone to engage in any activity prohibited to a State Party under this Convention (e.g., by helping another country, or a non-state actor such as an international terrorist entity, acquire CW), would thus be highly relevant to an Article I compliance finding.

The United States also believes that, because of their obligation under subparagraph 1 (d) of Article I which requires States Parties not in any way to assist, encourage, or induce others to acquire CW, States Parties are under an obligation to exercise due diligence in their trade in precursor chemicals and dual-use equipment that could be employed in the development of CW. In particular, States Parties should exercise restraint in their dealings with recipient entities, and should not undertake any potential CW-related transfers of technology or chemicals to any entity about which there is a reasonable suspicion that it is engaged, or seeks to be engaged, in the development, production, stockpiling, or use of CW in any way that would be prohibited to a State Party to the CWC.

Moreover, under paragraph 5 of Article V of the CWC, a State Party may not “construct any new CWPFs or modify any existing facilities for the purpose of CW production or for any other activity” prohibited by the CWC. This focus upon the *purpose* for which construction or modification occurs indicates that whether or not prohibited quantities of banned or controlled chemicals are actually present, the development and maintenance of a CW mobilization capability would amount to noncompliance with the Convention if it were undertaken with such CW applications in mind. In judging such CW mobilization intent, where more direct evidence is unavailable, a number of factors may be relevant, including the country’s record of CWC compliance in other respects; the accuracy and completeness of its declarations; its history of CW-related activity; the legitimate economic or commercial need for chemicals, the production of which requires the development of processes easily adaptable for CW production; and the degree to which production methods it adopts diverge in otherwise inexplicable ways from industry practice, or are uneconomical or implausibly inefficient in peaceful applications.

The United States notes that subparagraph 9(b) of Article II expressly permits possession of chemical agents for “[p]rotective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons.” By contrast, subparagraph 1(c) of Article I prohibits engaging in “any military preparations to use chemical weapons.” Part VI, Section A of the Verification Annex spells out in more detail which activities are permitted under the CWC, making clear that a State Party may not “produce, acquire, retain, transfer or use” Schedule 1 chemicals unless they are applied to legitimate “research, medical, pharmaceutical or protective purposes,” and possessed only in small quantities “strictly limited to those which can be justified for such purposes,” but in no circumstances more than one metric ton. Part VI, Section C of the Verification Annex specifies allowable production quantities at declared and undeclared facilities, but it does not alter the basic rule that *purpose* is the touchstone of compliance with regard to research quantities of chemical agents. Appropriately scaled research undertaken for legitimate protective purposes *against* chemical weaponry is thus permitted, but research aimed at developing or improving *weapons* applications would constitute noncompliance. It should be noted, moreover, that under subparagraph 1(c) of Article I there is no requirement that “military preparations to use chemical weapons” actually involve chemical agents. Accordingly, research undertaken for the purpose of facilitating weapons uses rather than for protective purposes would constitute a violation of the CWC, regardless of whether or not chemical agents were involved. (Research using CW agent simulants or CW munitions development, for example, would thus present noncompliance problems if undertaken for weapons, rather than protective, purposes.)

As of December 31, 2010, there were 188 States Parties to the CWC, the latest being Bahamas, which became a State Party on May 25, 2009. This Report addresses additional U.S. compliance issues with six countries: China, Denmark, Iran, Iraq, Libya, and the Russian Federation.

## COUNTRY ASSESSMENTS

### CHINA

#### FINDING

The United States assesses that China has made an accurate declaration in relation to its historical CW program, including CW agent production and disposition. The United States will continue to engage China on whether it should have declared a Schedule 1 chemical produced as an intermediate in the manufacture of a pharmaceutical. (U)

#### BACKGROUND

The Convention entered into force for China on April 29, 1997. In its initial declaration, China declared former CW-related facilities and activities and current activities not prohibited under the Convention. The United States has since resolved its concerns about historical CW production and disposition.

Additionally there has come to light new information on a spill of the undeclared Schedule 1 chemical nitrogen mustard 2 (HN2) at a pharmaceutical factory. This factory has not been declared.

#### Compliance Discussions

The United States has since 1998 maintained a dialogue with Beijing that has included discussing the Chinese declaration and the issue of possible undeclared Schedule 1 activities.

#### COMPLIANCE ANALYSIS

Available information allowed the United States to confirm that China has fully declared its historical CW activities, including CW production, and disposition of produced CW agents. It has not provided information on possible transfer of CW agents to another country, and is unlikely to do so. China also may have obligations to declare a Schedule 1 facility (and perhaps others) that may use captively<sup>1</sup> produced Schedule 1 chemical HN2.

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<sup>1</sup> According to the decision by the OPCW CSP (C-10/DEC.12, dated 10 November 2005), the production of a Schedule 1 chemical “is understood for declaration purposes to include intermediates, by-products, or waste products that are produced and consumed within a defined chemical manufacturing sequence, where such products are chemically stable and therefore exist for a sufficient time to make isolation from the manufacturing stream

The OPCW Technical Secretariat (TS) has reported that China has fully implemented legislation under Article VII of the CWC that includes measures to control transfers of scheduled chemicals and penal provisions. Text of the adopted measures has been provided to the OPCW. China also has acknowledged and declared that it has a national program for protection under paragraph 4 of Article X of the CWC. Beijing made its first declaration under this article in 2002 and has continued to do so annually.

## DENMARK

### FINDING

Based on new information provided by Denmark, the United States is aware that a commercial pharmaceutical facility in Denmark produced a Schedule 1 chemical in captive use that was above the CWC threshold for meeting the definition of a CWPF. The United States notes that Denmark has ordered the facility to halt future production of the pharmaceutical product and is seeking resolution through the OPCW Executive Council (EC). To date, the United States judges that Denmark is acting in a transparent and responsible manner in its efforts to implement measures to redress the situation.

### BACKGROUND

The Convention entered into force (EIF) for Denmark on April 29, 1997. Since EIF Denmark had no compliance issues until it notified the TS in May 2010 that in the course of preparing its Annual Declaration on Past Activities (ADPA) for 2009, that it had discovered that a private pharmaceutical firm had produced captively a Schedule 1 chemical for the manufacture of ketobemidone, a pain reducing opiate analgesic for children with cancer who are allergic to natural opiates (e.g., morphine). Between May and September 2010, Denmark consulted with the TS on the issue. The chemical HN2 was produced in excess of the 10 kilogram (kg) threshold limit imposed by paragraph 11 of Part VI of the Verification Annex in a reactor larger than the 100 liter (L) limit imposed by paragraph 8 of Part VI of the Verification Annex. This excess production indicates that the firm produced HN2 within the definition of a CWPF as defined by paragraph 8 (a) (i) (1) of Article II and in contradiction to paragraph 1 (a) of Article 1 of the Convention.<sup>2</sup> At the October 2010 EC-62, Denmark offered a national paper to redress the situation through two possible draft decisions, one that exempted pharmaceutical manufacturers from the provision of paragraph 8 (a) (i) (1) of Article II and the other that proposed raising the threshold of 10 kg per year for paragraph 11 of Part VI of the Verification Annex. The paper was considered by EC-62 and the EC requested the TS to provide a legal opinion on, and an assessment of, the proposals and their implications for the CWC. It requested the Chairperson to appoint a facilitator to effect “speedy initiation of consultations” and to “issue a report by the

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possible, but where, under normal design or operating conditions, isolation does not occur.” China, like other States Parties to the Convention, would be expected to declare such “captive use” products if they otherwise fall within the declaration provisions of CWC. More specifically, China would be expected to declare a Schedule 1 Captive Use facility consuming nitrogen mustard as an intermediate step in the production of a pharmaceutical.

<sup>2</sup> Whether the production in that process would cause the facility to fall within the meaning of the Article 1 definition of a CWPF or the Verification Annex limitations is uncertain at this time and further analysis is being conducted into the negotiation history of related Treaty provisions and historical industry practices.

facilitator at the earliest possible stage” with the intent for the EC to take action no later than EC-63.

### **Compliance Discussions**

Upon its review of the 2009 ADPA, the Government of Denmark voluntarily informed the OPCW of the situation and engaged in several informal meetings with the TS to advise the TS of the situation and seek advice on redressing the situation. During EC-62 (October 5-8, 2010), Denmark prepared for the Council’s consideration two options for redressing the situation. Denmark also brought two technical experts from the commercial company (PharmaZell) to hold consultations with members of the EC on the situation. The United States, and several other delegations, held bilateral consultations with the Danish government and the company representatives. Denmark also hosted an open meeting, which all interested delegations could attend and listen to technical presentations by the company, ask questions, and gather information. Since learning of this situation, the United States believes that Denmark is committed to seeking a timely and consensus resolution to the issue (by EC-63, February 2011), and that Denmark has acted in a transparent and responsible manner to redress the situation. The United States and other States Parties continue to conduct an analysis of relevant CWC provisions and study the Danish proposals in capitals.

### **COMPLIANCE ANALYSIS**

During 2009, a research and development batch of ketobemidone resulted in a quantity of captively-produced HN2 that fell below the declaration threshold. Subsequently, two batches of ketobemidone, one of which was commercial-scale, have been produced, which places the facility, by definition, into the category of a CWPF. The Danes are hopeful that a resolution to this particular case can be reached to exempt PharmaZell’s ketobemidone production activities from resulting in its facility being defined as a CWPF. Whether the activities of the facility were inconsistent with the CWC or cause the facility to fall within the CWC definition of a CWPF remain under study.

The OPCW TS has reported that Denmark has fully implemented legislation under Article VII of the CWC that includes measures to control transfers of scheduled chemicals and penal provisions, however, it does not address captive use of Schedule 1 chemicals. The text of the adopted measures has been provided to the OPCW. Denmark also has acknowledged and declared that it has a national program for protection under paragraph 4 of Article X of the CWC. Denmark made its first declaration under this article in 1997 and has continued to do so annually since 2006.

### **IRAN**

### **FINDING**

Based on available information, the United States cannot certify whether Iran has met its CWPF declaration obligations, destroyed its specialized CW equipment or retained an undeclared CW stockpile.

## **BACKGROUND**

The Convention entered into force for Iran on December 3, 1997. Iran made its initial declaration piecemeal in June 1998, January 1999, and March 1999.

The United States does not have sufficient information to be certain whether some Iranian facilities may be involved in or retain the capability to produce CW agents, and likewise insufficient information about the disposition of specialized CW equipment used in former CWPFs. The United States also has insufficient information about possible CW activity prior to entry into force of the Convention.

### **Compliance Discussions**

On the margins of OPCW EC meetings in 2001 and 2004, the United States engaged the Iranian delegation about Iran's CWC compliance. The outcome of the discussions did not completely resolve any of the issues.

## **COMPLIANCE ANALYSIS**

Due to a combination of irregularities in the Iranian declaration and insufficient clarification from Iran, the United States cannot certify:

- that Iran has met its CWPF declaration obligations because of possible CW-capable infrastructure, to include the possibility of a clandestine offensive CW production capability dispersed among industrial chemical plants and at military-owned facilities;
- that it has destroyed its specialized CW equipment (Iran has probably failed to meet its CWC obligations by failing to declare and destroy some of its specialized CW production equipment); and
- that it has not retained an undeclared CW stockpile.

The OPCW TS has reported that Iran has fully implemented legislation under Article VII of the CWC that includes measures to control transfers of scheduled chemicals and penal provisions. As part of its obligations under paragraph 4 of Article X of the CWC, Iran submitted a declaration in 2003 acknowledging that it had a national protection program. Iran has submitted declarations annually since that time.

## **IRAQ**

## **FINDING**

Iraq made its initial CW, CWPF and industry declarations but has not yet produced a complete General Plan for Destruction, nor has it hosted the necessary visits to declared CWPFs

and chemical weapons storage facilities (CWSFs) by the OPCW TS.<sup>3</sup>

## **BACKGROUND**

The Convention entered into force for Iraq on February 12, 2009. Iraq made its initial CW and CWPF declaration based on available United Nations (UN) documentation. Due to the fact that CWSF bunkers containing declared CW are sealed and having only incomplete UN documentation in relation to the bunkers, Iraq has had difficulty in formulating its General Plan for Destruction of its declared CW. Additionally the OPCW TS has not made required visits to Iraq's declared CWPFs and CWSFs, which would likely allow the TS to make destruction planning recommendations, at least in relation to the General Plans for Destruction of Iraq's declared CWPFs. Thus, Iraq has not yet produced complete General Plans for Destruction of its CW and CWPFs as required by the Convention. During the reporting period Iraq continued to consult with the OPCW TS and States Parties on the issue.

### **Compliance Discussions**

The United States has maintained a dialogue with Iraq in relation to preparation of its General Plan for Destruction of its CW and CWPFs.

## **COMPLIANCE ANALYSIS**

Iraq indicated its intent to meet its declaration and CW destruction obligations by attempting to produce General Plans for Destruction based on the limited information available to it. Recommendations by Iraqi experts none the less were made and the Iraqi Council of Ministers has approved guidance for the plans in late 2010. As of December 31, 2010, there was no evidence that the plans were drafted.

The OPCW TS has reported that Iraq has not implemented legislation under Article VII of the CWC that includes measures to control transfers of scheduled chemicals and penal provisions. Iraq has not declared a national program for protection under paragraph 4 of Article X of the CWC.

## **LIBYA**

### **FINDING**

Libya's disclosure regarding its CW program, its accession to the CWC, and the destruction of its unfilled CW munitions, solid precursor chemicals, and specialized CW production equipment are significant steps toward Libya coming into full compliance with its CWC obligations. By December 31, 2010, Libya had destroyed all of its Category 3 CW and met its one percent Category 1 CW destruction deadline. In February 2011, Libya retained less than 50 percent of its declared Category 1 CW and less than 60 percent of its declared Category 2 CW. Libya has not yet met its obligations under Article VII.

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<sup>3</sup> The TS made overflights of the declared CWSFs and CWPFs on May 4, 2011.

## BACKGROUND

The Convention entered into force for Libya on February 5, 2004, and Libya made its initial declaration in March 2004. Tripoli declared a CW stockpile, CWPFs and chemical industry facilities under Article VI of the Convention.

Libya requested and received approval in January 2005 to convert the CWPFs in Pharma 150 at Rabta to purposes not prohibited by the CWC.

In February and March 2004, under the oversight of OPCW inspectors, Libya completed destruction, and activities related to destruction, of its declared Category 3 CW unfilled aerial bombs. In addition, it secured all sensitive CW materials, agents, and equipment pending their elimination under the CWC.

Libya made significant progress in the elimination of its CW stockpile and facilities during the 2004-2005 timeframe. The progress included submitting to the OPCW its detailed plan for the destruction of the mobile units that were declared as CWPFs, as well as all other spare and dismantled equipment from the Al Rabta CWPFs. Libya destroyed its solid Category 2 CW, i.e., precursor chemicals, in 2005 under the auspices of the OPCW TS. The TS also confirmed the destruction in March 2005 of Libya's mobile units that were declared as CWPFs, and of the specialized CW production equipment.

The Libyans began the conversion of the two former CWPFs at Al Rabta in January 2005, which included the dismantling of the CW production facilities, the elimination of all declared spare and dismantled equipment under full verification measures, and inspection by the OPCW inspectors. The TS informed States Parties that Libya planned to complete the conversions by January 2008. Libya later indicated it expected to complete conversions by December 31, 2009,<sup>4</sup> and succeeded in accomplishing the conversions on time.

In July 2005, Libya requested U.S. assistance in destroying its remaining CW and precursor chemicals. Libyan officials told the United States that Libya's cabinet had refused funding and desired U.S. assistance to demonstrate strong U.S.-Libyan political ties. The United States responded that it was prepared, in principle, to assist Libya in meeting its CWC obligations, provided that: (1) it was understood that Libya remains ultimately responsible for destroying its CW stockpile and meeting its treaty obligations, including approved destruction deadlines; (2) U.S. funds were available; and (3) the United States and Libya were able to conclude the necessary implementing agreements and arrangements, including liability responsibility and cost-sharing by Libya.

In December 2006, the United States and Libya signed a government-to-government contract to provide financial and technical support to design, build, and operate a chemical weapons destruction facility (CWDF). Negotiations with a U.S.-designated firm to design and build a CWDF were initiated as agreed under the government-to-government contract. However, in June 2007, Libya terminated the Libya contract following a 30-day notification, citing disagreement in the negotiations with the U.S.-designated firm.

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<sup>4</sup> Conversion of the Rabta CWPFs was completed by December 31, 2009.

In July 2009, Libya reported the reloading of mustard, pinacolyl alcohol and isopropanol from leaking storage containers at Ruwagha. In April 2010, Libya began destruction by hydrolysis of the precursors, phosphorus trichloride and thionyl chloride, at Ruwagha with the Libyan-designed Ruwagha Hydrolysis and Neutralization System (RHNS). This was quickly halted due to technical difficulties. Libya then ordered from the Italian firm SIPSA a skid mounted hydrolysis unit that was scheduled to, but did not, start up at Ruwagha in December 2010 as the RHNS-2. SIPSA was also contracted to construct a skid mounted hydrolysis unit, RHNS-1, to meet the 1 percent and possibly the 20 percent deadlines for destruction of its Category 1 sulfur mustard stockpile. The skid unit was planned to be installed at Ruwagha and operate in the November to mid-December 2010 time frame. SIPSA was also contracted to fabricate, deliver and install equipment for the Rabta Toxic Chemical Destruction Facility (RTCDF) with delivery scheduled for December 2010, installation to be completed by January 31, 2011, and start-up to occur in March 2011, to meet the 45 and 100 percent destruction deadlines for the Category 1 stockpile. The facility would include a furnace for mustard, 2-chloroethanol and tributylamine incineration, a rotary kiln to incinerate contaminated dunnage and other combustible items, an autoclave to destroy mustard heel in polyethylene containers and a hydrolysis unit to be used for unspecified purposes. The hydrolysis unit would in part be constructed from equipment salvaged from the RNHS-2.

In light of further delays in Libya's CW destruction program, in November 2005, CSP-10 agreed further to extend Libya's 1, 20 and 45 percent deadlines "in principle," with specific dates to be proposed by Libya by March 31, 2006. EC-46 in July 2006, recommended approval of the all the dates requested by Libya. In December 2006, CSP-11 established the following dates for the intermediate Category 1 destruction deadlines: 1 percent, May 1, 2010; 20 percent, July 1, 2010. and 45 percent, November 1, 2010, and granted an extension to December 31, 2010, of the deadline for destruction of all Libya's Category 1 CW; and called upon Libya to destroy all of its Category 2 CW no later than December 31, 2011. At the Destruction Informals prior to EC-57 in July 2009, Libya announced that it might have difficulty in achieving the 1 percent deadline of May 1, 2010, due to "environmental concerns," and in August 2009 formally indicated that it could not meet the second set of extended deadlines. EC-58 in October 2009, recommended extending the Libyan Category 1 intermediate destruction deadlines to: 1 percent, November 1, 2010, 20 percent, December 15, 2010, and 45 percent, January 31, 2010. CSP-14 in December 2009, granted these intermediate Category 1 CW destruction deadlines, and amended the 100 percent deadline to May 15, 2011. In September 2010, Libya reported that due to necessary technical specification changes and to destruction facility design changes that it would need to further extend its 20 percent and 45 percent Category 1 intermediate deadlines to March 30, 2011, and April 25, 2011, respectively. These extensions were granted by CSP-15 in November 2010; the 1 percent and 100 percent deadlines established by CSP-14 remained the same.<sup>5</sup> Libya was reported to have destroyed one percent of its Category 1 stockpile on October 31, 2010, and achieved 22.33 percent destruction prior to December 31, 2010.<sup>6</sup> (U)

### **Compliance Discussions**

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<sup>5</sup> Libya missed the Category 1 100 percent destruction deadline.

<sup>6</sup> As of February 6, 2011, Libya retained less than 50 percent of its declared Category 1 chemical agent and less than 60 percent of its declared chemical precursors.

Between March and December 2003, the United States and the United Kingdom had numerous exchanges with and visits to Libya to discuss the modalities of weapons of mass destruction (WMD) destruction, including Libya's accession to the CWC. In March 2003, Libya approached the United Kingdom and United States, expressing interest in removing concerns about whether it was pursuing WMD programs. In the course of subsequent discussions and visits, the Libyans made significant disclosures about their chemical weapons programs, as well as other WMD activities. The United States and the United Kingdom conducted a number of exchanges with the Libyans, with the intention of exploring the depth and commitment of their initiative. A team of American and British experts traveled to Libya twice - in October and December 2003 - to receive detailed presentations on Libya's nuclear, chemical and biological activities. In addition to extensive discussion during a total of three weeks of meetings, the experts were shown covert facilities and equipment and were told about years of Libyan efforts to develop chemical weapons capabilities. With regard to chemical issues, Libya showed these initial U.S.-UK teams a significant quantity of sulfur mustard chemical agent that was produced at the Pharma 150 plant at Al Rabta more than a decade previously; aerial bombs that were designed to be filled with mustard agent on short notice; equipment in storage that could be used to outfit a second CW production facility; and dual-use chemical precursors that could be used to produce mustard and nerve agent.

After Libya terminated the contract with the United States in relation to U.S. assistance for Libyan CW destruction in July 2007, the United States has held several informal discussions with Libya, on the margins of meetings of the OPCW, concerning its progress toward destruction of its CW and conversion of the Rabta CWPFs.

## **COMPLIANCE ANALYSIS**

Libya has destroyed all of its Category 3 CW, all of its solid Category 2 CW and some of its liquid Category 2 CW precursors. It successfully met its Category 1 one percent destruction and 20 percent destruction deadlines. The OPCW TS has reported that Libya has not yet met its Article VII obligations. The TS has reported that Libya's Article VII national implementation legislation has undergone legal review, but still has to go to the General People's Congress (National Assembly). The OPCW TS provided assistance with drafting Libya's legislation. Libya has a National Authority, but has not yet enacted implementing legislation or administrative measures required under Article VII. As part of its obligations under paragraph 4 of Article X of the CWC, Libya submitted a declaration in 2005 acknowledging that it had a national protection program. Libya has not submitted any subsequent Article X declarations.

## **RUSSIA**

### **FINDING**

The United States is unable to ascertain whether Russia has met its obligations for declaration of its CWPFs, CW development facilities, and CW stockpiles, and whether Russia is complying with the CWC-established criteria for destruction and verification of its CW, although we have ascertained that Russia is now destroying CW agent hydrolysis reaction masses at its

operating CWDFs.

## **BACKGROUND**

In May 1997, the Duma passed, and President Yeltsin signed, the Russian Federal Law on Chemical Weapons Destruction, approving implementation of a 1996 destruction plan. The Convention entered into force for Russia on December 5, 1997, and it made its initial declaration on time in March 1998. The Russian declaration included CWPFs, CWSFs, a CWDF, and a stockpile of 39,969 metric tons of CW agent, in both bulk and weaponized form. Its Article VI declaration included Schedule 2, Schedule 3, and other chemical production facility (OCPF) plant sites.

Russia submitted plans and received OPCW approval for the destruction or conversion of its declared CWPFs. Under the CWC, all CWPFs were required to be destroyed no later than April 29, 2007. According to the OPCW TS, all CWPF destructions had not yet been completed by December 31, 2007, but have since been completed.<sup>7</sup>

As noted above, in May 1997, the Duma passed, and President Yeltsin signed, the Russian Federal Law on Chemical Weapons Destruction, approving implementation of a destruction plan. The Russians provided additional details on and changes to their destruction plan in June 2002 and September 2003. In recent years, Russia has taken steps to strengthen its CW destruction program, and has significantly increased funding for this program, although admittedly from a low starting point.

Russia completed destruction of both its Category 2 and 3 weapons within the Convention's timelines.

In July 2005, Russia's revised overall CW destruction plan received cabinet-level approval. Details of Russia's revised plan were later provided to the OPCW. Under this plan, Russia, with significant international assistance, was to have constructed seven CW destruction facilities at Kambarka, Maradykovskiy, Leonidovka, Shchuch'ye, Pochep, Kizner, and Gorny. As of October 2008, Kambarka and Gorny had been constructed and had completed destruction operations. Maradykovskiy, Shchuch'ye, and Leonidovka were operational as of October 4, 2010, with construction of a second train underway at Shchuch'ye. Pochep started up in the last quarter of 2010, and Kizner construction was projected to continue into 2011.

Following two intermediate CW destruction deadline decisions, in March 2006, the OPCW established December 31, 2009, as the deadline for Russia to destroy 45 percent of its CW stocks with the final deadline remaining April 29, 2012. Russia met the 45 percent deadline and as of October 2010, Russia had destroyed 48.46 percent of its Category 1 stockpile. In 2010, Russia announced that it would not meet the April 29, 2012, deadline for 100 percent Category 1 CW destruction and that destruction activities would continue through 2015.

*The Russian CW Stockpile.* The United States assesses that Russia's CWC declaration is

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<sup>7</sup>The OPCW TS reported in February 2009 that Dzerzhinsk CWPF has been destroyed and that Russia had completed destruction of CWPFs scheduled for destruction.

incomplete with respect to chemical agent and weapons stockpiles.

*Undeclared CWPFs and CW-Capable Facilities.* The United States notes that there are additional facilities that Russia may have been required to declare as CWPFs. The United States continues to seek clarification of reports about mobilization capabilities at declared and non-declared facilities.

*Russian CW Development Facilities.* The United States does not share the Russian view that development facilities, including CW testing facilities, should not be declared because of the Russian interpretation of the CWC “primarily for” criterion in Article III of the CWC.

*The Issue of 100 Percent Destruction.* Russia is using a two-step process to destroy its nerve agent stocks at some of its CWDFs: (1) neutralizing the nerve agent; and (2) disposal of the reaction mass (e.g., incineration et alia). Russia has argued that first-step neutralization of the nerve agents would meet CWC destruction requirements, but the United States and some other member states are not convinced that first-step neutralization satisfies the CWC requirement that CW destruction be “essentially irreversible,” given the presence of a significant amount of Schedule 2 chemicals in the reaction mass. The TS has agreed to give Russia destruction credit for the completion of the first step of CW agent neutralization so long as Russia destroys, under TS supervision, the reaction mass in a second step. Indeed, Russia is destroying the reaction masses at Shchuch’ye by bituminization and at Maradykovskiy and Leonidovka by incineration. Pochep, which came on line in the fourth quarter of 2010, also destroys the hydrolysis reaction mass by incineration.

### **Compliance Discussions**

The United States has engaged in numerous exchanges with Russia regarding a number of compliance issues in 2002, 2003, and 2006, during which the United States discussed the accuracy of Russia’s CWC declaration.

In 2006 and again in 2010 the United States reiterated its proposal to hold expert-level consultations, but, as of July 2010, Russia had not yet agreed to renew such consultations.

## **COMPLIANCE ANALYSIS**

Russia has completed destruction of those CWPFs scheduled for destruction, but has not met the CWPF conversion deadline. In the absence of additional information from Russia, the United States is unable to ascertain whether Russia has declared all of its CW stockpile, all CWPFs, and all of its CW development facilities. Russia is destroying in a second step, reaction masses resulting from hydrolysis of the CW agents at its operating CWDFs.

The OPCW TS has reported that Russia has fully implemented legislation under Article VII of the CWC that includes measures to control transfers of scheduled chemicals and penal provisions. The text of the adopted measures has been provided to the OPCW. Russia also has acknowledged and declared that it has a national program for protection under paragraph 4 of Article X of the CWC. Russia made its first declaration under this article in 2005 and has

continued to do so annually.