

International Law and National Security

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The year 2000 was anything but peaceful, as internal conflicts with international implications continued to smolder in Sierra Leone, Indonesia, Afghanistan, Russia, Colombia, and elsewhere; Ethiopia and Eritrea fought along their common border; the ancient struggle in the Middle East flared up again; and a truculent Saddam Hussein continued to bar United Nations weapons inspectors from Iraq. Progress toward reductions in the weapons of war also seemed to stall. Yet there were no large-scale international armed conflicts, and the United Nations Security Council played an increasingly active role in stanching the bloodshed in a number of areas.¹

The accession of George W. Bush to the U.S. presidency raised serious questions about the future of international security. During the presidential campaign, Governor Bush and his advisers indicated that they would withdraw U.S. troops from United Nations peacekeeping forces in the Balkans, despite European protests, while seeking a buildup in U.S. military strength. President Bush's declared opposition to the Comprehensive Test-Ban Treaty, as well as his pledge to deploy a national missile defense system, even if it means abrogating the 1972 Anti-Ballistic Missile (ABM) Treaty, also made prospects for progress in arms control extremely uncertain.

This review of international security issues in the last year of the twentieth century addresses conflicts in several regions around the world, then focuses on issues of arms control, terrorism, intelligence, and access to sensitive information.

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1. In August, an independent panel of experts recommended that United Nations peacekeeping forces be enlarged and professionalized, better financed, and better equipped to defend themselves and their mandates. See *Report of the Panel on United Nations Peace Operations*, U.N. Doc. A/55/305-S/2000/809 (2000), available at http://www.un.org/peace/reports/peace_operations/docs/full_report.htm; *Secretary-General Kofi Annan Promises Major Reform of UN Peacekeeping*, U.N. Press Release (Aug. 23, 2000), available at http://www.un.org/peace/reports/peace_operations/docs/pr1.htm.

I. Regional Conflicts

A. AFRICA

During the year, armed conflicts flared in nations across the African continent, including Angola, Congo, Sierra Leone, and Sudan, and along the border between Ethiopia and Eritrea. We focus here on those with the greatest potential for spreading to neighboring states, with special emphasis on the extensive involvement of the United Nations Security Council.

1. Sierra Leone

In an effort to end a decade of violence that left tens of thousands of people dead or maimed, the elected government of Sierra Leone and the rebel force called Revolutionary United Front (RUF) signed a peace agreement in Lomé, Togo on July 7, 1999. Attacks on civilians and humanitarian workers continued, however, and rebel forces refused to disarm and demobilize. The United Nations Security Council responded in February 2000 by ordering an expansion of its existing peacekeeping forces in Sierra Leone to 11,100, charging them especially to provide security at government buildings, speed the flow of humanitarian assistance, and guard military equipment collected from former combatants.²

In early May, the RUF, led by Foday Sankoh, resumed attacks on the government army. Rebel forces took 500 U.N. peacekeepers hostage and released them only after the intercession of Liberian President Charles Taylor and the dispatch of British troops to help restore order.³ Meanwhile, Mr. Sankoh was captured in the Sierra Leone capital, Freetown, and held for trial there.⁴ The U.N. Security Council again raised the number of its peacekeepers in the country, this time to 13,000,⁵ while the U.S. Senate passed a resolution declaring that "the United States government should do all in its power to help ensure that the Revolutionary United Front (RUF) and its leaders . . . are held accountable for the crimes and abuses committed."⁶

Recognizing the importance of diamond sales in financing the RUF rebellion, the U.N. Security Council voted on July 5, 2000 to ban all diamond purchases from Sierra Leone until the development of an effective Certificate of Origin regime.⁷ Later in the year, President Clinton signed a proclamation barring entry into the United States by any persons (or their spouses, children, or parents) who "plan, engage in, or benefit from activities that support" the RUF, specifically including Liberian President Charles Taylor and other of-

2. S.C. Res. 1289, U.N. SCOR, 4099th mtg., U.N. Doc. S/RES/1284 (2000), available at <http://www.un.org/Docs/scres/2000/1289e.pdf>.

3. See Catherine Macleod, *Combat Role for Troops Ruled Out: Hoon Insists British Forces' Role Will End Once UN Mission is Reinforced*, HERALD (U.K.), May 16, 2000, at 2; see also Jane Perlez, *U.S. to Send G.I.'s to Train Africans for Sierra Leone*, N.Y. TIMES, Aug. 9, 2000.

4. Douglas Farah, *Rebel Leader Captured; Sankoh's Arrest Sparks Jubilation in Sierra Leone's Capital*, WASH. POST, May 18, 2000, at A1.

5. S.C. Res. 1299, U.N. SCOR, 4145th mtg., U.N. Doc. S/RES/1299 (2000), available at <http://www.un.org/Docs/scres/2000/res1299e.pdf>.

6. S. Res. 315, 106th Cong. (2000), available at <http://fosalone.org/sres315.html>.

7. S.C. Res. 1306, U.N. SCOR, 4168th mtg., U.N. Doc. S/RES/1306 (2000), available at <http://www.un.org/Docs/scres/2000/res/1306e.pdf>.

ficials of his government.⁸ Congress followed suit by cutting off assistance to any country that the Secretary of State determines has provided military aid to the RUF, or that has assisted in the distribution of illicit diamonds from Sierra Leone.⁹

In August, the Security Council instructed its peacekeeping force in Sierra Leone to go on the offensive—to “deter and, where necessary, decisively counter the threat of RUF attack” and to “assist the Sierra Leone government to extend state authority, restore law and order, and further stabilize the situation progressively throughout the entire country.”¹⁰ The United States also sent approximately 200 soldiers to Nigeria to help train and equip U.N. peacekeeping personnel from several states in the region,¹¹ although legislation sponsored by Senator Patrick Leahy of Vermont forbade assistance to troops that have violated human rights.¹²

Later the same month, in response to continuing acts of savagery by rebel forces against civilians, the U.N. Security Council agreed to set up a special tribunal for Sierra Leone to try “crimes against humanity, war crimes, and other serious violations of international humanitarian law, as well as crimes under relevant Sierra Leone law committed within the territory of Sierra Leone.”¹³ At the end of the year, rebels still held about two-thirds of the country, prompting the Security Council to adopt yet another resolution expressing disappointment at the RUF’s failure to fully abide by its agreements and extending the mandate of U.N. peacekeeping forces there until March 31, 2001.¹⁴

2. Ethiopia and Eritrea

In May, renewed fighting broke out in a two-year-old war between Ethiopia and Eritrea over the location of their 620-mile common border.¹⁵ Following U.N. Security Council resolutions condemning the bloodshed and approving an arms embargo,¹⁶ the two states agreed in June to a cease-fire brokered by the Organization of African Unity and the United States, pursuant to which U.N. peacekeeping forces would patrol a 15-mile-wide buffer

8. Statement by the President on Liberia (Oct. 11, 2000), available at <http://clinton6.nara.gov/2000/10/2000-10-11-statement-by-the-president-on-liberia.html>.

9. Foreign Operations, Export Financing, and Related Programs Appropriations Act, Pub. L. No. 106-429, § 583, 114 Stat. 1900, 1900A-56 (2000).

10. S.C. Res. 1313, U.N. SCOR, 4184th mtg., U.N. Doc. S/RES/1313 (2000), available at <http://www.un.org/Docs/scres/2000/res1313e.pdf>.

11. See Ellen Nakashima, *Clinton Encourages Nigerian Democracy: Former Pariah Called “Pivot Point” for Africa*, WASH. POST, Aug. 27, 2000; Jane Perlez, *supra* note 3.

12. Foreign Operations, Export Financing, and Related Programs Appropriations Act, Pub. L. No. 106-429, § 563, 114 Stat. 1900, 1900A-46 (2000).

13. S.C. Res. 1315, U.N. SCOR, 4186th mtg., U.N. Doc. S/RES/1315 (2000), available at <http://www.un.org/Docs/scres/2000/res1315e.pdf>. See Barbara Crossette, *U.N. to Establish a War Crimes Panel to Hear Sierra Leone Atrocity Cases*, N.Y. TIMES, Aug. 15, 2000; Elizabeth Neuffer, *Will Bush Backpedal on War Criminals?* BOSTON GLOBE, Jan. 14, 2001, at D1.

14. S.C. Res. 1334, U.N. SCOR, 4253rd mtg., U.N. Doc. S/RES/1334 (2000), available at <http://www.un.org/Docs/scres/2000/1334e.pdf>.

15. See Jane Perlez, *U.S. Did Little to Deter Buildup as Ethiopia and Eritrea Prepared for War*, N.Y. TIMES, May 22, 2000.

16. S.C. Res. 1297, U.N. SCOR, 4142nd mtg., U.N. Doc. S/RES/1297 (2000), available at <http://www.un.org/Docs/scres/2000/1297e.pdf>; S.C. Res. 1298, U.N. SCOR, 4144th mtg., U.N. Doc. S/RES/1298 (2000), available at <http://www.un.org/Docs/scres/2000/1298e.pdf>.

zone along the border.¹⁷ A final peace agreement was signed in December,¹⁸ and U.N. peacekeepers began to be deployed there soon afterward.¹⁹

3. *Democratic Republic of Congo*

Violence continued to plague the former Belgian colony, as military forces from six foreign nations vied for control of different parts of the large, mineral-rich country. Early in the year, the U.N. Security Council strongly reiterated its support for a 1999 cease-fire agreement calling for withdrawal of all foreign troops from Congo.²⁰ It also authorized the expansion of the U.N. Organizing Mission in the Democratic Republic of Congo (MONUC) to some 5,500 military personnel, with a mandate, *inter alia*, to monitor compliance with the cease-fire, facilitate humanitarian assistance, and begin demining. Another Security Council resolution in June expressed outrage at renewed fighting between Ugandan and Rwandan troops in Kisangani, as well as human rights abuses throughout the country.²¹ It also declared its concern over the illegal exploitation of Congolese natural resources to support the fighting. Following the signing of disengagement agreements in Maputo on November 27, 2000, and Harare on December 6, 2000, the Security Council extended the mandate of MONUC to June 15, 2001, while expressing serious concern about the spread of HIV among women and girls because of the conflict, and about the abduction and recruitment of child soldiers.²² Because of continued fighting, however, only a handful of peacekeeping forces had actually been deployed in Congo by year's end.

B. LATIN AMERICA

Since the early 1970s the United States has provided assistance to Colombian police and military forces as part of the U.S. "War on Drugs." The U.S. Congress upped the ante dramatically in July 2000 in response to Colombian President Andres Pastrana's announcement the year before of a new \$7.5 billion program called "Plan Colombia."²³ Plan Colombia is designed not only to fight drugs but also to support the peace process there, provide economic relief and social development, and strengthen the judicial system and human

17. See Ian Fisher, *With Accord Set, Ethiopia and Eritrea Pause in Fighting*, N.Y. TIMES, June 16, 2000; *Report of the Secretary General on Ethiopia and Eritrea*, U.N. Doc. S/2000/643 (2000), available at <http://www.un.org/Docs/sc/reports/2000/643e.pdf>. See also S.C. Res. 1312, U.N. SCOR, 4181st mtg., U.N. Doc S/RES/1312 (2000), available at <http://www.un.org/Docs/scres/2000/1312e.pdf>; S.C. Res. 1320, U.N. SCOR, 4197th mtg., U.N. Doc. S/RES/1320 (2000), available at <http://www.un.org/Docs/scres/2000/1320e.pdf> (authorizing the deployment of 4,200 peacekeeping troops until March 15, 2001).

18. See *Eritrea, Ethiopia Formally End War; Peace Accord Halts Two-Year Conflict*, WASH. POST, Dec. 13, 2000, at A37; Letter from the Secretary-General to the President of the Security Council (Dec. 14, 2000), U.N. Doc. S/2000/1194, available at <http://www.un.org/Depts/dpko/unmee/1194.pdf>.

19. See *Progress Report of the Secretary-General on Ethiopia and Eritrea*, U.N. Doc. S/2001/45 (2001), available at <http://www.un.org/Docs/sc/reports/2001/45e.pdf>.

20. S.C. Res. 1291, U.N. SCOR, 4104th mtg., U.N. Doc. S/RES/1291 (2000), available at <http://www.un.org/Docs/scres/2000/1291e.pdf>.

21. S.C. Res. 1304, U.N. SCOR, 4159th mtg., U.N. Doc. S/RES/1304 (2000), available at <http://www.un.org/Docs/scres/2000/1304e.pdf>.

22. S.C. Res. 1332, U.N. SCOR, 4247th mtg., U.N. Doc. S/RES/1332 (2000), available at <http://www.un.org/Docs/scres/2000/1332e.pdf>.

23. Fiscal Year 2000 Supplemental Appropriations Act, Pub. L. No. 106-246, Title III, 114 Stat. 511, 570 (2000). Another \$459 million was targeted at other Andean nations and U.S. anti-drug and law enforcement agencies.

rights.²⁴ A new appropriation adds \$860 million in emergency counter-narcotics aid to Colombia for fiscal year (FY) 2000 and FY 2001 to \$330 million already approved for the same period. About three-quarters of that amount is earmarked for assistance to the Colombian military and police, mostly for sixty helicopters and training for three battalions.²⁵

Funding was conditioned upon, *inter alia*, the suspension and prosecution of Colombian armed forces personnel credibly linked to gross human rights violations or to paramilitary groups.²⁶ In August, however, President Clinton waived all but one of the conditions, as the statute authorized him to do,²⁷ on grounds that it was “in the national security interest” to do so.²⁸ The funding measure also directed the president to prepare a report on U.S. policy and strategy regarding counter-narcotics assistance to Colombia and neighboring countries,²⁹ and the conference committee report on the measure directed the Secretary of State to report at six-month intervals on progress in abating human rights abuses and achieving a negotiated peace.³⁰ Concern about “Vietnamization” of U.S. entanglement in Colombia’s long-running civil war also led Congress to limit the number of U.S. military personnel in the country to 500. However, the president may waive that limitation for up to ninety days in order to rescue U.S. armed forces there if they become “involved in hostilities” or if “imminent involvement . . . in hostilities is clearly indicated by the circumstances.”³¹

A General Accounting Office report late in the year warned that “the total cost and activities required to meet the plan’s goals remain unknown, and it will take years before drug activities are significantly reduced.”³² Critics of Plan Colombia charged further that the program simply continues an already-failed U.S. drug eradication policy, that U.S. goals are ill defined, that widespread human rights abuses are likely to persist, and that aid to the Colombian military may actually damage an already fragile peace process in the country.³³

24. The program is described and defended in Luis Alberto Moreno, *Plan Colombia and Human Rights*, 8 HUM. RTS. BRIEF 9 (2000). See generally General Accounting Office, *Drug Control: U.S. Assistance to Colombia Will Take Years to Produce Results* (GAO-01-26) (2000).

25. The financing is described in detail in Center for International Policy, *The Contents of the Colombia Aid Package* (Dec. 9, 2000), available at <http://www.ciponline.org/colombia/aid/aidsumm.htm>.

26. Pub. L. No. 106-246, § 3201(a)(1), 114 Stat. 573.

27. Pub. L. No. 106-246, § 3201(a)(4), 114 Stat. 573.

28. See Office of the Press Secretary, The White House, *Memorandum of Justification in Connection with the Waivers Under Section 3201(a)(4) of the Emergency Supplemental Act* (Aug. 23, 2000), available at <http://clinton6.nara.gov/2000/08/2000-08-23-memorandum-of-justification-on-colombia.html>. See Marc Lacey, *Clinton Defends the Outlay of \$1.3 Billion to Colombia*, N.Y. TIMES, Aug. 24, 2000. See also Joanne Mariner, *The Clinton Administration’s Stealth Waiver of Human Rights Protections for Colombia*, WRIT, Feb. 8, 2001, available at <http://writ.news.findlaw.com/mariner/20010208.html>.

29. Pub. L. No. 106-246, § 3202, 114 Stat. at 574. The report may be found at Office of the Press Secretary, The White House, *Letter from the President to the Chairman of the House and Senate Committees on Appropriations et al.* (Oct. 26, 2000), available at <http://www.ciponline.org/colombia/aid/102601.htm>.

30. See Center for International Policy, *The Contents of the Colombia Aid Package* (Dec. 9, 2000), available at <http://www.ciponline.org/colombia/aid/aidsumm.htm>. The first report is Department of State, *Colombia 60 Day Human Rights Report* (Sept. 11, 2000), available at <http://www.ciponline.org/colombia/aid/091101.htm>.

31. Pub. L. No. 106-246, § 3204(b) and (c), 114 Stat. 576.

32. General Accounting Office, *supra* note 24, at 5.

33. See Andrew Miller, *U.S. Military Support for Plan Colombia: Adding Fuel to the Fire*, 8 HUM. RTS. BRIEF 8 (2000); Adam Isacson, *Plan Colombia: Military Response Fails to Address Social Problems*, COLOMBIA UPDATE, Summer/Fall 2000, at 5.

C. THE MIDEAST

1. *Lebanon*

At the end of January, and again in July, the U.N. Security Council extended for six months the mandate of its United Nations Interim Force in Lebanon (UNIFIL).³⁴ In June, Israel unilaterally withdrew its troops from territory occupied as a security buffer zone in southern Lebanon since 1978, allowing U.N. peacekeepers finally to take up positions there and begin patrolling the border later in the summer.³⁵ Efforts to link the withdrawal to a peace agreement between Israel and Syria, however, were not successful.³⁶

2. *Israel, the West Bank, and the Gaza Strip*

Meanwhile, prospects for a settlement of the ongoing conflict between Israel and the Palestinians seemed to wax and wane during the year. In February, PLO leader Yasir Arafat broke off on-going negotiations with Israeli President Ehud Barak. The two met again in March at Sharm el-Sheikh to revive talks that continued in various settings until fall. On September 28, 2000, however, Israeli opposition leader Ariel Sharon made a highly publicized visit to the Temple Mount in Jerusalem, sparking violent protests that resulted in hundreds of deaths, mostly Palestinian, over the next several months.³⁷ Following a U.N. Security Council resolution condemning the violence and urging an immediate resumption of negotiations,³⁸ Barak and Arafat met once again on October 17, 2000 at a summit in Egypt led by President Clinton, but the cease-fire agreed to there never took hold.³⁹ Continued negotiations sponsored by the Clinton administration had by year's end yielded no agreement.⁴⁰

D. EUROPE

1. *Kosovo*

Despite recurring ethnic violence inside Kosovo, the United Nations Interim Administration Mission in Kosovo (UNMIK), established in June 1999,⁴¹ worked throughout the year 2000 to restore law and order and to reestablish an administrative infrastructure.⁴² At

34. S.C. Res. 1288, U.N. SCOR, 4095th mtg., U.N. Doc. S/RES/1288 (2000), available at <http://www.un.org/Docs/scres/2000/1288e.pdf>; S.C. Res. 1310, U.N. SCOR, 4177th mtg., U.N. Doc. S/RES/1310 (2000), available at <http://www.un.org/Docs/scres/2000/1310e.pdf>.

35. See Christopher S. Wren, *U.N. Clears Way for Peacekeepers in Southern Lebanon*, N.Y. TIMES, June 17, 2000; *Key Dates in UN Efforts to Deploy in South Lebanon*, AGENCE FRANCE-PRESSE, Aug. 4, 2000.

36. These developments are spelled out in some detail in Nicholas Blanford, *Post-Israel Stability in Southern Lebanon*, JANE'S INTELLIGENCE REV., Oct. 1, 2000.

37. See, e.g., Lee Hockstader & Howard Schneider, *Cease-Fire in Mideast Collapses; New Clashes Erupt After Paris Talks*, WASH. POST, Oct. 6, 2000, at A1.

38. S.C. Res. 1322, U.N. SCOR, 4205th mtg., U.N. Doc. S/RES/1322 (2000), available at <http://www.un.org/Docs/scres/2000/1322e.pdf>.

39. See Deborah Sontag, *Cease-Fire Accord Reached; Israel Agrees to Pullback; Palestinians to Curb Riots*, N.Y. TIMES, Oct. 18, 2000.

40. See Tracy Wilkinson & Mary Curtius, *Mideast Peace Prospects Unraveled as Acrimony Grew Diplomacy*, L.A. TIMES, Dec. 31, 2000, at A10.

41. S.C. Res. 1244, U.N. SCOR, 54th Sess., 4011th mtg., U.N. Doc. S/RES/1244 (1999), available at <http://www.un.org/Docs/scres/1999/99sc1244.htm>.

42. See generally *What is UNMIK?*, available at <http://www.un.org/peace/kosovo/pages/unmik12> (last visited June 11, 2001); *Chronology: UN Interim Administration in Kosovo*, available at <http://www.un.org/peace/kosovo/news/kos30day> (last visited June 11, 2001).

the end of the year, the Secretary-General was able to report that UNMIK had achieved one of its key objectives, with the holding of municipal elections throughout Kosovo on October 28, 2000.⁴³

Supporting the efforts of UNMIK, a NATO-led international security force of 44,000 troops (KFOR) worked to prevent renewed fighting, demilitarize the Kosovo Liberation Army, establish a secure environment for refugees, and monitor Kosovo's borders.⁴⁴ President Clinton authorized the deployment of some 7,500 combat-equipped U.S. troops with KFOR in Eastern Kosovo, and another 1,000 supporting military personnel in neighboring Macedonia, Greece, and Albania.⁴⁵

The National Defense Authorization Act for FY 2001 approves expenditures for peace-keeping operations in Kosovo of \$1.65 billion, but it authorizes the president to waive that limit if he certifies that the waiver is "necessary in the national interests of the United States" and if he reports specific reasons for the additional funding to Congress.⁴⁶ The same Act requires the president to establish, by May 31, 2001, "militarily significant benchmarks for conditions that would achieve a sustainable peace in Kosovo and ultimately allow for the withdrawal of the United States military presence in Kosovo."⁴⁷ It also directs the President to develop a "comprehensive political-military strategy for addressing the political, economic, humanitarian, and military issues in the Balkans," as well as "near-term, mid-term, and long-term objectives in the region," and to report both strategy and objectives to Congress at six-month intervals.⁴⁸

The Foreign Operations, Export Financing, and Related Programs Appropriations Act for FY 2001 provided \$100 million in assistance to Serbia, but none of the funds can be delivered after March 31, 2001, unless the president has determined that the government of Yugoslavia is cooperating with the International Criminal Tribunal for Yugoslavia, is honoring its commitments under the Dayton Accords, and is pursuing policies that reflect a respect for minority rights and the rule of law.⁴⁹ The Act also bars aid to states that have failed to apprehend and transfer to the Tribunal residents who have been publicly indicted by the Tribunal.⁵⁰

2. *European Rapid Reaction Force*

At their summit meeting in Nice in early December, European Union leaders approved a plan for the formation of a 60,000-troop rapid-reaction force that could carry out missions in which NATO declined to be involved.⁵¹ According to the plan, to be implemented by

43. Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, U.N. Doc. S/2000/1196 (2000), available at <http://www.un.org/Depts/dhl/docs/s20001196.pdf>.

44. KFOR was authorized by the same Security Council resolution that established UNMIK.

45. See *Letter from the President on Kosovo* (June 16, 2000), available at <http://clinton6.nara.gov/2000/06/2000-06-16-text-of-letter-from-the-president-on-kosovo.html>. To the same effect, see *Letter from the President on KFOR* (Dec. 18, 2000) (reporting a reduction in U.S. troops in Kosovo to 5,600), available at <http://clinton6.nara.gov/2000/12/2000-12-18-letter-from-the-president-on-kfor.html>.

46. National Defense Authorization Act of 2001, Pub. L. No. 106-398, § 1005, 114 Stat. 1654, 1654A-603 to 1654A-605 (2000).

47. *Id.* § 1212(a), 114 Stat. 1654A-806 to 1654A-807.

48. *Id.* §§ 1212(b)-(d), 114 Stat. 1654A-807 to 1654A-808.

49. Foreign Operations, Export Financing, and Related Programs Appropriations Act, Pub. L. No. 106-429, § 594, 114 Stat. 1900, 1900A-60 (2000).

50. *Id.* § 564(d), 114 Stat. 1900A-48.

51. See Keith B. Richburg, *European Military Force to Cooperate with NATO*, WASH. POST, Dec. 9, 2000.

2003, the EU force would depend on NATO for its command structure, planning, and intelligence, as well as for troops and equipment. Details remain to be worked out, however. NATO members were divided on whether to grant EU access to NATO planning, or to allow NATO to control EU planning, or to give non-NATO members access to NATO assets.⁵² U.S. officials worried that such an EU force might undermine the integrity of the NATO alliance.

E. ASIA

1. *Afghanistan*

Efforts continued during the year to isolate and put pressure on the Taliban regime in Afghanistan. Most importantly, in mid-December the U.N. Security Council adopted a resolution condemning the Taliban's sheltering of terrorists, and calling specifically for it to surrender Usama bin Laden.⁵³ The resolution imposed an embargo on non-humanitarian flights into the country and a strict ban on arms transfers to the Taliban. It also repeated earlier demands that the Taliban halt violations of human rights, especially discrimination against women and girls. In addition, the Security Council called for an end to production and trafficking in opium. And it urged warring factions within Afghanistan to conclude a cease-fire and establish a multi-ethnic, representative government. At year's end, however, these measures appeared to have had little effect.

2. *East Timor*

In February, an Australian-led multinational force handed over military control to the United Nations Transitional Administration in East Timor (UNTAET).⁵⁴ The job of UNTAET, which includes some 9,000 troops and observers, as well as 1,640 civilian police, is to administer the former Indonesian territory until it is strong and stable enough to become fully independent. The United States contributed only a handful of members to UNTAET, but it established a "rotational presence" through temporary deployments, including ship visits, to provide humanitarian and civic assistance to East Timor's citizens, and it sent about thirty military personnel to support those activities.⁵⁵ The foreign operations appropriations bill for FY 2001, enacted in November, conditioned military aid to Indonesia on the president's determination that the Indonesian government is prosecuting violations of human rights by members of its armed forces and militia groups, allowing displaced persons and refugees to return to East Timor, and not impeding the activities of UNTAET.⁵⁶

52. See William Drozdiak, *Europeans Question Bush's Views on NATO*, WASH. POST, Dec. 15, 2000.

53. S.C. Res. 1333, U.N. SCOR, 54th Sess., 4251st mtg., U.N. Doc. S/RES/1333 (2000), available at <http://www.un.org/Docs/scres/2000/>.

54. UNTAET was established by the U.N. Security Council in S.C. Res. 1272, U.N. SCOR, 4057th mtg., U.N. Doc. S/RES/1272 (1999), available at <http://www.un.org/peace/etimor/docs/9931277E.htm>. See generally *East Timor—UNTAET Background*, available at <http://www.un.org/peace/etimor/UntaetB> (last visited June 11, 2001).

55. The U.S. deployments are reported in two letters, "consistent with the War Powers Resolution," from the president to congressional leaders on Feb. 28, 2000, <http://clinton6.nara.gov/2000-02-25-letter-to-the-congress-on-us-military-forces-to-east-timor.html> (last visited Mar. 25, 2001), and Aug. 25, 2000, <http://clinton6.nara.gov/2000/08/2000-08-28-test-of-a-letter-from-the-president-on-interfet.html> (last visited Mar. 25, 2001).

56. Foreign Operations, Export Financing, and Related Programs Appropriations Act, Pub. L. No. 106-429, § 579, 114 Stat. 1900A-55.

II. Arms Control

A. UNITED STATES–RUSSIA INITIATIVES

The year 2000 was, in terms of international agreements to control weapons of mass destruction, one of the most uneventful in recent memory. Only one formal bilateral agreement between the United States and Russia was approved, and ongoing negotiations did not materially progress. The most important development was Russia's ratification in May of the START II Treaty.⁵⁷ Russian approval was conditioned, however, upon U.S. Senate approval of the 1997 START II Protocol,⁵⁸ which would extend the treaty's deadline to 2007, and clarify the distinction under the Anti-Ballistic Missile (ABM) Treaty⁵⁹ between permitted theater missile defense systems and actual strategic defenses. Senate leaders have made it clear that the START II Protocol will not be approved, and the Clinton White House refused to submit it for consideration, effectively putting implementation of START II on hold pending formulation of the new Bush Administration's policy on the ABM Treaty.

Russian ratification of START II did open the door for formal START III discussions. Indeed, Russian President Putin called for reducing deployed strategic-nuclear arsenals to 1,500 warheads, instead of the 2,000-2,500 level agreed to at the 1997 Helsinki Summit.⁶⁰ On September 6, 2000, Presidents Clinton and Putin, meeting at the United Nations Millennium Summit in New York, agreed to the "strategic Stability Cooperation Initiative," committing the United States and Russia to an extended range of existing bilateral measures.⁶¹ Both presidents expressed continued support for the Nuclear Non-Proliferation Treaty and pledged to continue to work toward new arms control objectives, including a fissile material cutoff treaty and a START III agreement. They also agreed to six specific initiatives: (1) bilateral discussions on emerging ballistic missile threats; (2) joint theater missile defense (TMD) exercises; (3) continuing work on the Joint Data Exchange Center, intended to house a U.S.–Russian early-warning information center; (4) completion of a bilateral agreement on pre-launch notification of ballistic missile launches; (5) continued work on a "global" approach to missile non-proliferation; and (6) expert meetings to consider expanded cooperation on Comprehensive Test-Ban Treaty (CTBT) verification and warhead safety.⁶²

57. Treaty on Further Reduction and Limitation of Strategic Offensive Arms, Jan. 3, 1993, U.S.–Russ., S. TREATY DOC. NO. 103-1 (1993). See *Putin Signs START II Ratification Bill Into Law*, INTERFAX RUSSIAN NEWS, May 4, 2000. The START II Ratification Bill was passed by the Russian State Duma on April 14, 2000, and signed into law by President Vladimir Putin on May 4, 2000.

58. See *Russian Duma Ratifies START II*, CURRENT DIGEST OF THE POST-SOVIET PRESS, May 17, 2000; Ilya Bulavinov, *Shifting the Blame—START II May Not Go into Effect*, KOMMERSANT, Apr. 18, 2000.

59. Treaty on the Limitation of Anti-Ballistic Missile Systems, May 26, 1972, U.S.–U.S.S.R., 23 U.S.T. 3425.

60. See Igor Gedilaghine, *Duma Ratifies START II, Putin Issues U.S. With Arms Control Warning*, AGENCE FRANCE-PRESSE, Apr. 14, 2000; Alexander G. Higgins, U.S., *Russian Negotiators Ready to Kick Off START III: Officials*, ASSOCIATED PRESS, Apr. 14, 2000; *Russia Ready to Cut Strategic Arsenals to 1,500 Warheads - Putin (Part 2)*, INTERFAX NEWS AGENCY, Apr. 14, 2000.

61. See *Clinton, Putin Discuss Missile Defense*, DEUTSCHE PRESSE-AGENTUR, Sept. 6, 2000.

62. See International Information Programs, U.S. Department of State, *Fact Sheet: U.S.–Russian Strategic Stability Cooperation Initiative*, Sept. 6, 2000, available at <http://www.usinfo.state.gov/topical/pol/arms/stories/00090702.htm>; Office of the Press Secretary, The White House, *Strategic Stability Cooperation Initiative Between the United States of America and Russian Federation Text of the Joint Statement and Implementation*

A provision in the National Defense Authorization Act for Fiscal Year 2001 diminished prospects for nuclear weapons reductions, however. The Act prohibits the United States from reducing its deployed strategic nuclear arsenal below START I levels of about 6,000 warheads until START II enters into force.⁶³ Congress adopted this limitation in 1997 to pressure Russia to ratify START II.⁶⁴ The FY 2001 Defense Authorization Act also requires the submission of a comprehensive nuclear posture review along with the Quadrennial Defense Review in December 2001.⁶⁵ The nuclear posture review will examine the role of the U.S. nuclear arsenal, its size, and the weapons complex needed to sustain it. Notably, the review will address the relationships among nuclear deterrence policy, targeting strategy, and arms control objectives. The legislation also calls on the Secretaries of Defense and Energy to submit a long-term plan for modernizing the strategic triad of bombers and land-based and submarine-based ballistic missiles.⁶⁶ Both secretaries must also undertake a study relating to the destruction of hardened and deeply buried targets—an oblique reference intended to facilitate research into the development of new low-yield nuclear weapons.⁶⁷

On November 13, 2000, President Putin announced Russia's readiness for "radical progress" on nuclear disarmament, suggesting that the United States and Russia cut their deployed strategic arsenals to 1,500 warheads each by 2008.⁶⁸ This figure is based on the legal framework developed for the START I and II agreements. Putin called for retaining and strengthening the ABM Treaty, but he also proposed "wide ranging cooperation" on theater missile defenses. He further suggested that the Joint Data Exchange Center being established in Moscow to share early-warning information on missile launches⁶⁹ could serve as a component of such cooperation.⁷⁰

One week later, the United Nations General Assembly adopted forty-eight resolutions and one decision dealing with disarmament.⁷¹ One resolution, supported by Russia and approved by a vote of 88-5, with sixty-six abstentions, urges continued compliance with and strengthening of the ABM Treaty.⁷² Another calls for early signature and ratification

Plan (Sept. 6, 2000), available at <http://clinton6.nara.gov/2000/09/2000-09-06-joint-statement-on-strategic-stability-cooperation-initiative.html>.

63. National Defense Authorization Act of 2001, Pub. L. No. 106-398, § 1043, 114 Stat. 1654A-263 (2000).

64. National Defense Authorization Act of 1998, Pub. L. No. 105-85, § 1302, 111 Stat. 1629, 1948-1951 (1997).

65. National Defense Authorization Act of 2001, Pub. L. No. 106-398, § 1041(c), 114 Stat. 1654A-262 (2000).

66. *Id.* § 1042.

67. *Id.*

68. See Henry Meyer, *Putin Proposes Deep Cuts in US-Russian Nuclear Arsenals*, AGENCE FRANCE-PRESSE, Nov. 13, 2000; Vladimir Isachenkov, *Putin Proposes New Deeper Nuclear Cuts for Russia and the United States*, ASSOCIATED PRESS, Nov. 13, 2000.

69. See Office of the Press Secretary, The White House, *Memorandum of Agreement Between the United States of America and the Russian Federation on the Establishment of a Joint Center for the Exchange of Data from Early Warning System and Notifications of Missile Launches* (June 4, 2000) (Moscow), available at <http://clinton4.nara.gov/WH/New/Europe-0005/factsheets/fs--joint-warning-center.html>.

70. See *Putin Launches Nuclear Disarmament Initiative* (condensed text), CURRENT DIGEST OF THE SOVIET PRESS/KRASNAYA ZVEZDA, Nov. 15, 2000.

71. Resolutions Adopted by the General Assembly at Its 55th Session on the Reports of the First Committee (Disarmament and International Security), Nov. 20, 2000, available at <http://www.un.org/Depts/dhl/resguide/r55c1.htm>.

72. *Id.*, Agenda Item 73, U.N. Doc. A/RES/55/33B, available at <http://www.un.org/documents/ga/res/55/a55r033.pdf>.

of the Comprehensive Test-Ban Treaty (CTBT),⁷³ as well as unilateral reductions of non-strategic nuclear weapons in a process leading to the elimination of all nuclear weapons.⁷⁴

On December 14, 2000, the United States and four former Soviet republics signed an agreement to end round-the-clock monitoring of missile plants in Utah and Russia, marking the successful conclusion of verification arrangements of the 1987 Intermediate Range Nuclear Forces Treaty.⁷⁵

Finally, a December 16, 2000 agreement is meant to facilitate the exchange of early-warning information about planned missile and space launches.⁷⁶ A Memorandum of Understanding on Notifications of Missile Launches requires notice of ballistic missile launches with a range or altitude greater than 500 kilometers. For space launches, notification is the norm, but there are exceptions for national security. For satellites forced from orbit and geophysical experiments that could interfere with early-warning radars, notification is voluntary. The new agreement applies to a far broader range of activities than earlier accords.

B. MULTILATERAL NON-PROLIFERATION

No major non-proliferation initiatives were negotiated or entered into force. The Ad Hoc Group of States Party to the Biological Weapons Convention⁷⁷ (BWC) convened in Geneva from July 10 to August 4, 2000 for its Twentieth session since 1995 to work on a protocol to strengthen the BWC. The Group reported no substantial progress, although it modified certain negotiating procedures and reaffirmed its commitment to have a new protocol drafted by 2001.⁷⁸

The 2000 Review Conference for the Nuclear Non-Proliferation Treaty (NPT) produced no new formal measures. At the Conference's beginning in April, however, Russian Foreign Minister Igor Ivanov urged consideration of the Global Control System for the Non-Proliferation of Missiles and Missile Technology (GCS), saying that it could offer a "real alternative to the destruction of the ABM Treaty."⁷⁹ The GCS would increase transparency and reduce the risk of miscalculation or misunderstanding by requiring nations to provide notification of pending missile or space-launch vehicle tests. To nations that forswore the use of missiles as delivery mechanisms for weapons of mass destruction, the GCS would provide security assurances against the hostile use of missile systems and assistance from the U.N. Security Council if such weapons were used against them, as well as assis-

73. Comprehensive Test-Ban Treaty, *opened for signature* Sept. 24, 1996, 35 I.L.M. 1439.

74. Resolutions Adopted by the General Assembly, *supra* note 71, Agenda Item 81, U.N. Doc. A/RES/55/41, available at <http://www.un.org/documents/ga/res/55/a55r041.pdf>.

75. See *United States and Four Ex-Soviet Republics Sign Agreement on INF Treaty*, ASSOCIATED PRESS, Dec. 14, 2000.

76. Memorandum of Understanding on Notifications of Missile Launches, Dec. 16, 2000, available at http://www.state.gov/www/global/arms/treaties/mou_mslaunch.html#toc.

77. Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, Apr. 10, 1972, 26 U.S.T. 583, 1015 U.N.T.S. 163.

78. See Procedural Report and Rolling Text, Ad Hoc Group 20th Session, available at <http://www.brad.ac.uk/acad/sbtwc/ahg52/ahg52.htm>; *Working Papers (AHG 20th Session)*, available at <http://www.brad.ac.uk/acad/sbtwc/ahg52wp/whg52wp.htm> (last visited June 11, 2001).

79. Statement by Igor S. Ivanov, Ministry of Foreign Affairs of the Russian Federation, at the Review Conference of the Parties to the Treaty on Non-Proliferation of Nuclear Weapons, New York, Apr. 25, 2000, available at <http://www.basicint.org/nuclear/revcon2000/nuk-00revcon-gen-russia.htm>.

tance in the peaceful uses of space. While supporting the multilateral exchange of test-launch data, Washington expressed concern that the GCS might "legitimize the missile programs of rogue states," and that security assurances for countries that renounce their missile programs would be "unfeasible."⁸⁰ United States officials also argued against using "one-size-fits-all" incentives at the expense of targeted bilateral efforts, and they worried that aid for peaceful space programs might be applied to military missile programs. Finally, these officials insisted that the existing Missile Technology Control Regime (MTCR)⁸¹ is the only forum in which these issues should be discussed.

The Review Conference issued its Final Document⁸² in May. It expressed the nuclear powers' commitment to an "unequivocal undertaking . . . to accomplish the total elimination of their nuclear arsenals"⁸³ and acknowledged a "principle of irreversibility" in reductions of weapons.⁸⁴ The signers committed to reductions in tactical nuclear weapons, as well as to "concrete agreed measures to further reduce the operational status of nuclear weapons systems," and a "diminishing role for nuclear weapons in security policies."⁸⁵ They also called for the preservation and strengthening of the ABM Treaty as a "cornerstone of strategic stability,"⁸⁶ and once again urged Israel to join the NPT.⁸⁷

Efforts to fulfill disarmament obligations under the Chemical Weapons Convention (CWC)⁸⁸ proceeded uneventfully. On December 30, 1999, the Commerce Department issued regulations requiring civilian U.S. facilities that produce, process, consume, import, or export toxic chemicals or precursors covered by the CWC to submit initial declarations of their activities by March 30, 2001, and to allow international verification activities.⁸⁹ The regulations effectively ended more than two years of U.S. non-compliance with the 1993 treaty. The United States expected to submit its industry declarations for Schedule 1 (the highest "risk" category) and Schedule 2 facilities by April 28, 2000, three years after the convention's entry into force, and inspections were expected to begin the following month. The U.S. will submit declarations for Schedule 3 facilities and unscheduled chemicals facilities at a later date.⁹⁰

Three developments threatened the sanctions regime imposed on Iraq in the wake of the Persian Gulf War: (1) a growing disillusionment with the efficacy of the sanctions; (2) rampant smuggling of oil; and (3) Iraq's disruption of its own oil supply in protest of

80. See Matthew Rice, *Russia Proposes Global Regime on Missile Proliferation*, ARMS CONTROL TODAY, May 2000.

81. The Missile Control Technology Regime was established in 1987 between the United States and its G-7 partners. See Department of State, *Missile Control Technology Regime: Guidelines for Sensitive Missile-Relevant Transfers*, available at http://www.state.gov/www/global/arms/treaties/mtrc_anx.html.

82. 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons: Final Document, available at <http://www.un.org/Depts/dda/WMD/finaldoc.html>.

83. *Id.*, "Practical Step" 6.

84. *Id.*, "Practical Step" 5.

85. *Id.*, "Practical Step" 9.

86. *Id.* para. 16.

87. See Matthew Rice, *NPT Review Conference Finds Consensus, Issues Document*, ARMS CONTROL TODAY, June 2000.

88. Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and Their Destruction, Jan. 13, 1993, 32 I.L.M. 800 (1993).

89. Bureau of Export Administration, Department of Commerce, *Chemical Weapons Convention Regulations (Supplementary Information)*, 64 Fed. Reg. 73,743 (1999).

90. See Seth Brugger, *U.S. Issues Chemical Industry Regulation*, ARMS CONTROL TODAY, Jan./Feb. 2000.

the sanctions. The humanitarian consequences of a decade of economic sanctions led to the highly publicized resignation of Hans von Sponeck, U.N. Humanitarian Co-ordinator for Iraq, and a visit to Iraq by Venezuelan President Hugo Chavez, the first by a head of state since the Gulf War.⁹¹ Humanitarian flights into Iraq by France,⁹² Russia,⁹³ Egypt, Syria, Turkey, and other Arab countries⁹⁴ were condemned by the United States⁹⁵ as violations of the air traffic embargo established early in the Gulf War by U.N. Security Council Resolution 670.⁹⁶ In July, Britain accused Iran and other Gulf states of helping Iraq bypass other U.N. sanctions, through an elaborate multimillion-dollar smuggling operation, to ship oil through the Gulf to markets in Asia and the West.⁹⁷ Another smaller-scale operation was conducted north into Turkey and west into Syria. Both provided Iraq with illicit revenues to revive its military infrastructure.

In April, the U.N. Security Council approved a new commission, staffed only by United Nations personnel, to carry out arms inspections in Iraq in accordance with its 1991 resolution ending the Persian Gulf War.⁹⁸ An earlier team of UNSCOM inspectors was withdrawn in December 1998, following Iraqi President Saddam Hussein's refusal to cooperate with them.⁹⁹ Although various economic sanctions are to remain in place until Iraq can be certified free of long-range missiles and weapons of mass destruction, Saddam continued his opposition to the inspections throughout 2000.¹⁰⁰ Concern about Iraqi weapons programs grew with a report that two of the factories bombed and badly damaged by the Desert Fox strikes in 1998 had been rebuilt, and that production of chlorine had resumed at a third factory.¹⁰¹ UNSCOM had monitored all three because of their previous involvement in making chemical or biological agents. The Security Council nevertheless twice extended its "oil for food" program, allowing continued oil sales at a high level and import of a lengthening list of civilian goods.¹⁰² At the beginning of December, however, Iraq unilat-

91. See Leon Barkho, *Chavez Heads to Iraq, Breaking Its Isolation, Annoying Washington*, ASSOCIATED PRESS, Aug. 10, 2000.

92. See Christophe de Roquefeuil, *US Slams France Over Iraq Flight*, AGENCE FRANCE-PRESSE, Sept. 22, 2000; *Organizers of New French Aid Flight to Iraq Reject Top-Level Pressure*, AGENCE FRANCE-PRESSE, Sept. 27, 2000.

93. See *Russian Plane Arrives at a Suddenly Busy Airport in Baghdad*, N.Y. TIMES/ASSOCIATED PRESS, Sept. 24, 2000.

94. See *US Says Syria, Egypt Violate UN Sanctions with Iraq Flights, Warns Sudan*, AGENCE FRANCE-PRESSE, Oct. 11, 2000.

95. See Roquefeuil, *supra* note 92.

96. S.C. Res. 670, U.N. SCOR, 2943rd mtg., U.N. Doc. S/RES/670 (1990), available at <http://www.un.org/Docs/scres/1990/670e.pdf>.

97. See Richard Beeston, *Gulf States Help Smugglers Sustain Saddam*, OTTAWA CITIZEN, July 5, 2000.

98. See *Security Council Approves New Organizational Plan for Monitoring Iraqi Disarmament*, DAILY HIGHLIGHTS, Apr. 13, 2000, available at <http://www.un.org/cgi-bin/dh.pl#55>; Barbara Crossette, *Security Council Approves New Arms Inspection Agency for Iraq*, N.Y. TIMES, Apr. 14, 2000.

99. See Barbara Crossette & Steven Lee Myers, *U.N. Readies Team to Check Weapons Held by the Iraqis*, N.Y. TIMES, Aug. 22, 2000.

100. See Barbara Crossette, *Iraq Seeks Talks with U.N. Chief on Arms-Inspection Impasse*, N.Y. TIMES, Nov. 8, 2000.

101. See Steven Lee Myers & Eric Schmitt, *Iraq Rebuilt Weapon Factories, U.S. Officials Say*, N.Y. TIMES, Jan. 22, 2001. Further concern was raised by publication in November 2000 of KHIDR ABD AL-ABBAS HAMZAH ET AL., *SADDAM'S BOMBMAKER: THE TERRIFYING INSIDE STORY OF THE IRAQI NUCLEAR AND BIOLOGICAL WEAPONS AGENDA* (2000), revealing further details of Saddam's efforts to develop weapons of mass destruction. Khidhir Hamza was director general of the secret Iraqi nuclear weapons program.

102. S.C. Res. 1302, U.N. SCOR, 4152nd mtg., U.N. Doc. S/RES/1302 (2000), available at <http://www.un.org/Docs/scres/2000/1302e.pdf>; S.C. Res. 1330, U.N. SCOR, 4241st mtg., U.N. Doc. S/RES/1330

erally halted its oil exports and condemned the U.N. sanctions committee for blocking its exports and for refusing a fifty-cent-per-barrel surcharge that would be paid into an account free of U.N. control.¹⁰³

C. PROTECTION OF RUSSIAN WEAPONS MATERIALS AND TECHNOLOGY

United States programs to address problems associated with Russian nuclear material proceeded with modest successes and some new initiatives. In November, pursuant to the Material Protection, Control and Accounting Program, the Department of Energy announced completion of an effort to consolidate and secure approximately ten metric tons of weapons-usable nuclear material—enough for more than 500 nuclear bombs—at the Novosibirsk Chemical Concentrates Plant in Siberia, Russia.¹⁰⁴

The Initiatives for Proliferation Prevention program is designed to engage former Soviet biological weapons scientists in non-military partnerships with national laboratories. In July, the Department of Energy announced four consumer and environmental projects initiated with investments from various public and private U.S. institutions. The largest of these will establish a sustainable ecological center to enable scientists to pursue the development of novel bioactive compounds and to market new products and services involving the use of those compounds. Other projects are intended to develop new products to prevent food contamination, to study methods for improving the shelf life and effectiveness of bioactive materials, and to develop new biological alternatives to chemical pesticides.¹⁰⁵ Announcement of these programs followed a March statement that the DOE and its Russian counterpart will develop a center in Zheleznogorsk for testing advanced equipment and technologies for remediation of high-level radioactive waste tanks.¹⁰⁶

The Nuclear Cities Initiative is designed to reduce the size of the Russian nuclear weapons complex and to help redirect the work of Russian scientists and engineers in the closed nuclear cities to alternative, non-military activities. In FY 2000, under significant pressure from Republican congressional leadership, Congress cut the program's \$15 million budget in half, asking DOE to demonstrate results before providing additional funding. But in FY 2001, the budget was increased from \$7.5 million to \$27.5 million; \$10 million is conditioned on a bilateral agreement under which Russia will close some of its four nuclear warhead assembly/disassembly facilities within five years.¹⁰⁷ In March, DOE's Lawrence Livermore National Laboratory signed two contracts to assist Russian weapons experts from the closed city of Snezhinsk in their transition to civilian employment. The contracts call

(2000), available at <http://www.un.org/Docs/scres/2000/1330e.pdf>. See Barbara Crossette, "Oil for Food" Program for Iraq Extended by Security Council, N.Y. TIMES, June 9, 2000; Barbara Crossette, Security Council Lets Iraq Spend Oil Fund, N.Y. TIMES, Dec. 6, 2000.

103. See Barbara Crossette & Neela Banerjee, *Iraq Halts Oil Exports, Blasts UN Sanctions Committee*, DEUTSCHE PRESSE-AGENTUR, Dec. 1, 2000.

104. See U.S. Dept. of Energy, *Ten Metric Tons of Russian Nuclear Material Secured* (Nov. 17, 2000), available at <http://www.nn.doe.gov/mpca/news.htm>.

105. See U.S. Dept. of Energy, *Consumer and Environmental Projects with Former Soviet Biological Weapons Scientists and U.S. Industry Partners* (July, 24, 2000), available at <http://www.energy.gov/HQPress/releases00/julpr/pr00191.htm>.

106. See U.S. Dept. of Energy, *U.S.-Russian Cooperation in Closed Nuclear City Expanded* (Mar. 10, 2000), available at <http://www.energy.gov/HQPress/releases/00/marpr/pr00067.htm>.

107. See Oleg Bukharin, Frank Von Hippel & Sharon K. Weiner, *Conversion and Job Creation in Russia's Closed Nuclear Cities* (Nov. 2000), available at <http://www.princeton.edu/cces/arms/obninsk1.pdf>.

for development of oil production technology and improvements to Russia's fiber optic cables for the commercial market.¹⁰⁸ In November, DOE announced the commissioning of the Strela Open Computing Center, which will provide commercial research opportunities to former nuclear weapons specialists in computer software programming and computer-assisted engineering and design. This will be the second open computing center created in Russia under the Nuclear Cities Initiative.¹⁰⁹

Two complementary initiatives focused on problems associated with plutonium reprocessing. In February, the Department of Energy announced that it reached an agreement "in principle" to suspend Russia's reprocessing of civilian reactor-generated spent fuel to produce weapons-usable plutonium, fulfilling a U.S. policy objective hailing back to President Carter.¹¹⁰ In the new agreement, the U.S. offered \$100 million to fund bilateral threat reduction efforts in Russia (in addition to the \$250 million DOE currently spends on such programs), including \$45 million for spent fuel storage and material protection, control, and accounting; \$20 million for joint long-term research on "developing nuclear fuel cycle options that maximize technological barriers to proliferation";¹¹¹ \$30 million for new efforts to safeguard military-origin material; and \$5 million for research into long-term spent fuel storage options.

Perhaps the more important development was the Plutonium Management and Disposition Agreement, signed in September, establishing U.S. and Russian commitments each to dispose of thirty-four metric tons of excess weapons plutonium.¹¹² At the Group of Eight (G-8) summit in Okinawa in July, the participating nations announced an agreement to develop a plan to finance Russian disposition of weapons-origin plutonium, as well as a "multilateral framework" to coordinate cooperation on the issue.¹¹³ The September Agreement provides a timeline for the design and construction of industrial-scale facilities to convert excess weapons plutonium to mixed oxide fuel, and provides for monitoring and inspection.¹¹⁴ The United States will provide up to \$400 million of the estimated \$1.7 billion cost of the Russian program, in addition to the \$4 billion the United States will spend to meet its own commitments. The agreement is contingent, however, upon Russia's securing additional international assistance.¹¹⁵

108. See U.S. Dept. of Energy, *U.S. Department of Energy Announces Russian Contracts* (Mar. 21, 2000), available at <http://www.energy.gov/HQPress/releases00/marpr/pr00078.htm>.

109. See U.S. Dept. of Energy, *Computing Center Commissions Non-Weapons Related Jobs* (Nov. 20, 2000), available at <http://www.energy.gov/HQPress/releases00/novpr/pr00289.htm>. The first Open Computing Center was inaugurated at Sarov in the fall of 1999.

110. See Judith Miller, *Moscow Takes Step to Ease U.S. Fears on Plutonium Use*, N.Y. TIMES, Feb. 7, 2000, at A1.

111. *Id.*

112. *Agreement Between the Government of the United States and the Government of the Russian Federation Concerning Management and Disposition of Plutonium Designated as No Longer Required for Defense Purposes and Related Cooperation* (Sept. 1, 2000), available at <http://www.doe-md.com> or <http://twilight.saic.com/md/DOCS/PDF2.ASP?mDoc'pudispagree.pdf>.

113. See *G8 Communiqué, Okinawa* (July 23, 2000), available at <http://www.g8kyushu-okinawa.go.jp/e/documents/commu.html>; The White House, *Fact Sheet: Disposition of United States and Russian Federation Weapons-Grade Plutonium* (July 21, 2000), available at <http://www.usinfo.state.gov/topical/pol/arms/stories/00060401.htm>.

114. See The White House, *Vice-President Gore Signs U.S.-Russia Plutonium Management and Disposition Agreement* (Sept. 1, 2000), available at <http://twilight.saic.com/md/bilatagreement1.htm>.

115. *Id.*

D. NON-PROLIFERATION EXPORT CONTROLS

Non-proliferation developments in 2000 included several changes to U.S. export control policy and diplomatic initiatives to restrict other nations' sales of weapons of mass destruction. This activity took place against a backdrop of: (1) U.S. efforts to facilitate its exports of items with only limited proliferation potential, and (2) growing frustration with the unwillingness of other states to comply with trade sanctions. The resulting measures reflect not so much a clear non-proliferation strategy as an attempt to harmonize conflicting policies.

In May, the Clinton administration proposed the Defense Trade Security Initiative¹¹⁶—seventeen measures to facilitate shipment of weapons and technology to NATO countries, Japan, and Australia.¹¹⁷ The initiative is intended to expedite arms export decisions, relax or waive export-licensing requirements, and reduce the number of licenses needed for exporting weapons. Rather than licensing each component or company that is party to an arms export deal, for example, the U.S. government could issue one license to cover an entire program or project. In addition, the government may provide advance consent to retransfers among countries that sign blanket end-use assurances. Countries may also negotiate bilateral agreements with Washington to allow specified foreign firms to import unclassified U.S. arms and data without a license, provided such countries raise their own export controls to match U.S. standards. Another provision relaxes restrictions on companies sharing technical data.

On October 6, 2000, President Clinton signed into law the Security Assistance Act of 2000.¹¹⁸ The Act requires that bilateral agreements under the May initiative be binding, and that recipient nations' export controls be "comparable" with U.S. laws.¹¹⁹ Unlike the May initiative, however, the Security Assistance Act calls for prior written U.S. approval of the re-export of U.S.-supplied items to third countries.¹²⁰

Consistent with these efforts to relax restrictions on the export of items that could be valuable to proliferators, the White House announced planned revisions of controls on shipments of high-performance computers (HPC) to states raising proliferation concerns, such as India, Pakistan, China, former Soviet states, and Middle Eastern countries.¹²¹ The changes more than double the previous limit on processing speed and eliminate the distinction between civilian and military end users, because advances in computer technology have made access to computer processors relatively easy. Some of the latest changes require congressional approval and therefore will not take effect immediately.

Iran's nuclear weapons program, and especially Russia's support for that program, received considerable attention in the year 2000. In March, both houses of Congress unan-

116. Bureau of Political Military Affairs, U.S. Dept. of State, *Exports of Commercial Communications Satellite Components, Systems, Parts, Accessories and Associated Technical Data*, 65 Fed. Reg. 34089-01 (2000). The Initiative is based on authority provided in § 1309(a) of the Foreign Relations Authorization Act for Fiscal Years 2000 and 2001, Pub. L. No. 106-113, 113 Stat. 1501, 1501A-513 (1999).

117. See Bureau of Political Military Affairs, U.S. Dept. of State, *Seventeen Agreed Proposals of the Defense Trade Security Initiative* (May 26, 2000), available at http://www.state.gov/www/global/arms/bureau_pm/dtc/fs_000526_proposals.html.

118. Security Assistance Act of 2000, Pub. L. No. 106-280, 114 Stat. 845 (2000).

119. *Id.* § 102 (a)(2)(A), 114 Stat. 847.

120. *Id.* § 102 (a)(2)(A)(i), 114 Stat. 847.

121. Bureau of Export Administration, Dept. of Commerce, *Revisions to License Exception CTP*, 65 Fed. Reg. 60,852 (2000).

imously passed the Iran Nonproliferation Act of 2000,¹²² authorizing the president to take punitive action against individuals or organizations that provide material aid to Iran's weapons of mass destruction programs.¹²³ Notably, the legislation substantially cuts U.S. funding to Russian agencies responsible for the International Space Station project unless Russia demonstrates a commitment to prevent aid to Iran's weapons programs.¹²⁴ The president must submit to Congress a list of entities that provide material assistance to such programs.¹²⁵ A presidential decision not to impose punitive measures must also be reported to Congress.¹²⁶

Despite the new law, Russia announced its withdrawal late in the year from a 1995 agreement not to sell arms to Iran, leading the Clinton administration to warn of sanctions if Russia enters into new arms agreements with Iran.¹²⁷ In October, the Senate Foreign Relations Committee held hearings¹²⁸ to determine whether the 1995 agreement undercut either the 1992 Iran-Iraq Arms Non-Proliferation Act¹²⁹ or the Foreign Assistance Act of 1996.¹³⁰ The former requires that sanctions be imposed on countries supplying Iran or Iraq with advanced conventional weapons. The latter prohibits the United States from providing foreign assistance to countries that deliver lethal equipment to states sponsoring terrorism. Administration officials responded by asserting that the equipment Russia had transferred to Iran was not destabilizing, that the transfer would not threaten the military balance in the Persian Gulf, and that no commitment had been made not to impose sanctions required by U.S. law.¹³¹ At year's end, Russia had not yet concluded any new arms deals with Iran, and U.S. and Russian experts had agreed to discuss the matter further.¹³²

China's export of ballistic missile components and technology to Iran, Pakistan, North Korea, and Libya also came under scrutiny,¹³³ leading to China's formal agreement, on

122. Iran Nonproliferation Act of 2000, Pub. L. No. 106-178, 114 Stat. 38 (2000).

123. *Id.* § 3(a)-(d).

124. *Id.* § 6(a).

125. *Id.* § 2(a) and (b).

126. *Id.* § 4(a).

127. See *Russia Terminates Agreement with U.S. on Suspension of Military Cooperation with Iran*, U.S. Threatens Russia with Economic Sanctions, RUSSIAN BUSINESS MONITOR, Nov. 24, 2000; David Hoffman, *Russia Dismisses Threat of Sanctions*, WASH. POST, Nov. 24, 2000; Wade Boese, *Russia to Bow Out of 1995 Deal Banning Arms Trade With Iran*, ARMS CONTROL TODAY, Dec. 2000. In a 1995 agreement with Vice-President Gore, Russian Prime Minister Chernomyrdin promised that Russia would not sign any new arms deals with Iran, would conclude all current orders by the end of 1999, and would provide information to the United States concerning all pending weapons orders.

128. *A Review of Gore-Chernomyrdin Diplomacy: Hearing before the Joint Subcomm. on European Affairs and Subcomm. on Near Eastern and South Asian Affairs of the Senate Comm. on Foreign Relations*, 106th Cong. (2000), available at <http://foreign.senate.gov/hearings/hrg102400.html>.

129. National Defense Authorization Act for Fiscal Year 1993, Pub. L. No. 102-484, 106 Stat. 2315 (1992).

130. Defense and Security Assistance Improvements, Pub. L. No. 104-164, 110 Stat. 1421 (1996).

131. See *Testimony of John P. Barker, Deputy Assistant Secretary of State for Nonproliferation Controls, and Joseph M. DeThomas, Deputy Assistant Secretary of State for Regional Nonproliferation, Before the Senate Foreign Relations Committee*, 106th Cong. (Oct. 25, 2000), available at <http://foreign.senate.gov/hearings/hrg102400.html>.

132. See *Russia Informs U.S. Delegation on New Arms Control Policy*, ASSOCIATED PRESS, Dec. 8, 2000; *U.S., Russian Delegation Wrap Up Conventional Arms Talks*, ASSOCIATED PRESS, Dec. 7, 2000; *Russia Pledges Not to Sell Arms to Iran*, N.Y. TIMES, Dec. 7, 2000, at A16; *Christophe de Roquefeuil, U.S., Russia to Hold Consultation on Iran, Nuclear Arms*, AGENCE FRANCE-PRESSE, Nov. 29, 2000; *Eli J. Lake, Albright, Ivanov Agree to Discuss 1995 Arms Pact*, UNITED PRESS INTERNATIONAL, Nov. 27, 2000.

133. Nonproliferation Center, Director of Central Intelligence, *Unclassified Report to Congress on the Acquisition of Technology Relating to WMD and Advanced Conventional Munitions* (Jan.-June 1999), available at http://www.cia.gov/cia/publications/bian/bian_feb_2000.html.

November 21, not to export items restricted by the Missile Technology Control Regime (MTCR).¹³⁴ In exchange, the Clinton administration immediately announced that it would resume processing applications for U.S. companies to launch satellites on Chinese rockets (which had been suspended since February), and that it would not pursue sanctions against China for past missile technology transfers.¹³⁵ However, the United States will continue to impose sanctions on entities that received Chinese assistance. China announced that it would soon issue a list of missile-related and dual-use items whose export will require a government license.¹³⁶ According to the State Department, China's new pledge indicates progress, but proof of its commitment will be found in the implementation.¹³⁷

China also figured in the June settlement of a dispute between the State Department and the Lockheed Martin Corporation over that company's alleged transfer of technical reports detailing sensitive rocket information to the Chinese Asia Satellite Telecommunications Corporation, a company partly owned by the Chinese government. Concerns were raised when the Chinese Long March rocket twice failed in 1992 to deliver satellites on target, but then successfully launched a satellite in 1995 after assistance from Lockheed. Although it avoided having to admit or deny guilt, Lockheed will pay \$8 million in fines over four years and spend \$5 million to upgrade its internal security procedures, the highest civil penalty ever imposed under the Arms Export Control Act and the International Traffic in Arms Regulations.¹³⁸ The Chinese Foreign Ministry characterized the charges as "entirely groundless."¹³⁹

At year's end, the president signed legislation reauthorizing the 1979 Export Administration Act and increasing the penalties that U.S. exporters could face for illegally exporting dual-use equipment and technologies.¹⁴⁰

III. Terrorism

In the wake of concerns about Y2K, initiatives to combat terrorism mostly took the form of commission reports and agency plans. The National Commission on Terrorism, chaired by Ambassador L. Paul Bremer III, issued its report in June.¹⁴¹ The Commission concluded that American policies are basically sound, but it found serious deficiencies in their imple-

134. See Jane Perlez, *China to Stop Selling A-Arms Delivery Systems*, N.Y. TIMES, Nov. 21, 2000; *U.S. Waives Sanctions on China, Imposes Them in Pakistan, Iran*, AGENCE FRANCE-PRESSE, Nov. 21, 2000; Barry Schweid, *State Department Welcomes Pledge Not to Assist Other Countries on Missiles*, ASSOCIATED PRESS, Nov. 21, 2000.

135. See Anita Narayan, *China—Freeze on Applications to Launch U.S. Satellites on Chinese Rockets Thaws*, CHINA ONLINE, Nov. 22, 2000; Norman Kempster, *U.S. to Skip Sanctions After China Arms Vow; Diplomacy*, L.A. TIMES, Nov. 22, 2000.

136. Bureau of Nonproliferation, U.S. Dept. of State, *Statement by People's Republic of China, Foreign Ministry Spokesperson* (Nov. 21, 2000), available at http://www.state.gov/www/global/arms/bureau_np/001121_china_missiles.html; *China Opposes Proliferation of Mass-Destruction Weapons: Spokesman*, AGENCE FRANCE-PRESSE, Nov. 21, 2000; Charles Hutzler, *China Promises Not to Help Foreign Missile Programs*, ASSOCIATED PRESS, Nov. 21, 2000.

137. Office of the Spokesman, U.S. Dept. of State, *Statement by Acting Assistant Secretary Richard Boucher* (Nov. 21, 2000), available at <http://secretary.state.gov/www/briefings/0011/001121db.html>.

138. See David E. Sanger, *U.S. Fines Lockheed \$13 Million in China Satellite Case*, N.Y. TIMES, June 14, 2000.

139. *Lockheed Illegal Exports Allegations Rejected by China*, AFX NEWS LIMITED, Apr. 9, 2000; *China Rejects U.S. Allegations on Satellite Motors*, AGENCE FRANCE-PRESSE, Apr. 9, 2000.

140. Increased Penalties for Violations of the Export Administration Act of 1979, Pub. L. No. 106-508, 114 Stat. 2360 (2000) (amending 50 U.S.C. App. § 2419).

141. National Commission on Terrorism, *Pursuing the Changing Threat of International Terrorism* (June 5, 2000), available at <http://w3.access.gpo.gov/nct>.

mentation. Calling international terrorism an increasingly dangerous and difficult threat to America, the Commission recommended stepping up U.S. efforts to collect intelligence, to disrupt and prosecute terrorist activities, to stanch state and private sources of support for terrorism, and to ensure that domestic officials at every level of government are prepared for attacks that could cause mass casualty. It also called for suspension of 1995 CIA guidelines restricting the recruitment of "unsavory sources" for intelligence collection.

The Bremer Commission singled out Iran, Syria and Afghanistan as state sponsors of terrorism, while Greece and Pakistan were said to be "not cooperating fully on counterterrorism."¹⁴² It urged Congress promptly to ratify the International Convention for the Suppression of the Financing of Terrorism, and it recommended the negotiation of an international convention to combat cyberterrorism. On the domestic front, it called for preparation of a manual to guide implementation of existing legal authorities and determine whether additional legal authority is needed. The commission stressed that Department of Defense (DOD) responses to domestic acts of terrorism should be the subject of detailed plans, including criteria for decisions to transfer command authority to DOD in extraordinary circumstances. It also recommended stricter controls on the possession of critical pathogens that could contribute to the development of biological weapons.

The Gilmore Commission released its second annual report in December, focusing primarily on managing the consequences of domestic terrorism.¹⁴³ It includes five key preventive recommendations to the executive and Congress: (1) crafting a "truly 'national strategy'" in the face of domestic terrorism; (2) empowering a senior authority within the executive branch for the purposes of planning and preparation; (3) consolidating domestic terrorism legislation; (4) focusing on state and local concerns and capabilities; and (5) enhancing intelligence, training, operations, and research and development.¹⁴⁴ Other recommendations include the creation of a National Office for Combating Terrorism, to formulate strategy and review planning within the executive branch, as well as a bipartisan congressional Special Committee for Combating Terrorism. The Commission stressed that a comprehensive, functional national strategy should be adequately financed and based on measurable performance objectives, and it should focus on the full range of threats from both domestic and international terrorism. In addition, domestic programs should be fully coordinated with local, state, and federal authorities.

The National Plan for Information Systems Protection¹⁴⁵ was launched in January to strengthen defenses against emerging threats to the nation's critical infrastructure, computer systems, and networks. The Final Report of the President's Commission on Critical Infrastructure Protection¹⁴⁶ estimated that by 2002, approximately 19 million people worldwide would be capable of mounting a cyber attack. The first version of the National Plan focuses on federal efforts to protect the nation's cyber-based infrastructures. Subsequent versions will address a broader range of state and local capabilities, as provided for under

142. *Id.*

143. Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction (The Gilmore Commission), *Toward a National Strategy to Combat Terrorism* (Dec. 15, 2000), available at <http://www.rand.org/nsrd/terrapanel/terror2.pdf>.

144. *See id.*

145. The White House, *Defending America's Cyberspace: National Plan for Information Systems Protection, Version 1.0 An Invitation to a Dialogue* (Jan. 7, 2000), available at http://www.ciao.gov/CIAO_Document_Library/national_plan%20final.pdf.

146. President's Commission on Critical Infrastructure Protection, *Critical Foundations: Protecting America's Infrastructures* (Oct. 1997).

PDD-63.¹⁴⁷ The Plan aims to balance national security concerns against the preservation of civil liberties and personal privacy.

The FBI's Strategic Plan: 1998-2003 addresses threats within the sphere of its National Foreign Intelligence Program. Its objectives are to: (1) identify, prevent, and defeat intelligence operations by any foreign power within the United States or against U.S. interests abroad that threaten national security; (2) prevent, disrupt, and defeat terrorist operations before they occur; and (3) deter the unlawful exploitation of emerging technologies by foreign powers, terrorists, and criminal elements.¹⁴⁸

Congress amended the Foreign Sovereign Immunities Act in 1996 to allow suits for damages against nations determined by the Secretary of State to be state sponsors of terrorism.¹⁴⁹ Suits under this provision resulted in large awards against Iran for its role in the detention of American hostages in Lebanon in the 1980s and the deaths of American students killed by terrorist bombers in Israel in the mid-1990s, as well as against Cuba for the shooting down of two civilian aircraft over international waters in 1996. Plaintiffs were unable to collect on their judgments, however, because almost all assets in this country of both Iran and Cuba were either blocked by the Treasury Department under sanctions laws or otherwise held by the U.S. government, and with one modest exception the president refused to release the assets.¹⁵⁰ Congress acted again in 1998 to make the blocked assets available to satisfy these judgments, but it also authorized the president to continue the blocking in the interest of "national security,"¹⁵¹ and the president immediately did so.¹⁵² In October 2000, Congress passed the Justice for Victims of Terrorism Act,¹⁵³ directing the Treasury Secretary to pay compensatory damage awards in certain final and pending suits against Iran and Cuba out of blocked assets and other funds held by the government, but preserving the president's ability to prevent executions or attachments against such assets. Again, the president immediately exercised his right to do so.¹⁵⁴ The new measure also provided for additional payments to states, public agencies, and NGOs for relief to victims of terrorist acts abroad who are U.S. citizens or employees.¹⁵⁵ The law remains unchanged for future plaintiffs in suits against state sponsors of terrorism, including Libya and Iraq.

After eleven years, thousands of witnesses, and 200,000 bits of evidence, the trial in the Lockerbie bombing of PanAm Flight 103 finally got underway on May 3, 2000¹⁵⁶ at Camp

147. *White Paper: The Clinton Administration's Policy on Critical Infrastructure Protection: Presidential Decision Directive 63* (May 1998), available at http://www.ciao.gov/CLAO_Document_Library/paper598.html.

148. *The FBI Counterterrorism Program: Assessing Threats, Managing Risk, and Establishing Priorities: Hearing Before the Subcomm. on National Security, Veterans Affairs, and International Relations of the House Government Reform Comm.*, 106th Cong. (2000) (statement of Terry Turchie, Deputy Asst. Director, FBI Counterterrorism Division).

149. Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, § 221, 110 Stat. 1211, 1241-1243 (1996), adding 28 U.S.C. § 1605(a)(7) and (e)-(g).

150. *See Conference Report on H.R. 3244, Victims of Trafficking and Violence Protection Act of 2000*, H.R. Rep. No. 106-939 (2000), 146 CONG. REC. H8856, H8885-H8886 (2000).

151. Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. No. 105-277, Title I, § 117, 112 Stat. 2681, 2681-491 to 492 (1998).

152. Presidential Determination No. 99-1, Determination to Waive Requirements Relating to Blocked Property of Terrorist-List States, 63 Fed. Reg. 59,201 (1998).

153. Pub. L. No. 106-386, §§ 2002-2003, 114 Stat. 1464, 1541-1546 (2000).

154. *Statement by the President* (Oct. 31, 2000), 2000 WL 28278421.

155. Pub. L. No. 106-386, § 2003, 114 Stat. 1543.

156. *See* Sonia Delesalle, *Lockerbie Trial Sets World Legal History*, AGENCE FRANCE-PRESSE, May 3, 2000; *Tortuous 11 Years to Bring Lockerbie Bombers to Trial*, AGENCE FRANCE-PRESSE, May 3, 2000; Jerome Socolovsky,

Zeist, a former U.S. air base in the Netherlands, based on temporary Scottish jurisdiction. The two defendants, Abdelbaset Ali Mohamed Al Megrahi and Al Amin Khalifa Fhimah, were charged with conspiracy to murder, or alternatively, contravention of Sections 2(1) and (5) of the Scottish Aviation Security Act of 1982.¹⁵⁷

In an ongoing criminal prosecution growing out of the bombings of American embassies in Kenya and Tanzania in 1998, the judge made several notable pre-trial rulings. One involved a warrantless search conducted abroad by U.S. agents for foreign intelligence purposes, and directed at an American citizen suspected of being an agent of a foreign power.¹⁵⁸ The court declared that requiring a judicial warrant for such a search would impose “a significant and undue burden on the Executive.”¹⁵⁹ However, the Fourth Amendment requires the search to be approved by either the president or the Attorney General. The court nevertheless refused to exclude evidence obtained without such approval, finding that it was collected in good faith, and that exclusion would not deter government misbehavior. In another ruling, the court decided that where extraterritorial application of a federal statute to a foreign national for acts committed outside the United States is justified by the “protective” principle of jurisdiction under international law, it also does not violate the defendant’s due process rights.¹⁶⁰

In a suit filed under Foreign Sovereign Immunities Act § 1605(a)(7),¹⁶¹ a federal judge ordered Iran to pay \$341 million in damages to Associated Press correspondent Terry Anderson and members of his family.¹⁶² In the 1980s, Anderson was held for nearly seven years as a hostage in Beirut by Hezbollah, with support, the court found, from Iran.

In December, 124 states signed the United Nations Convention on Transnational Organized Crime.¹⁶³ Not limited to counterterrorism, the Convention’s broad purposes are to strengthen international cooperation in combating serious crimes, to provide instruments for law enforcement and prosecutorial agencies, to encourage prevention efforts, and to support and protect victims of crime.

IV. U.S. Intelligence and Counterintelligence

The Intelligence Authorization Act for Fiscal Year 2001¹⁶⁴ includes several measures relevant to international security. As originally approved by Congress, the Act was vetoed by President Clinton because of one enormously controversial provision, inserted during secret hearings, that would for the first time have made an unauthorized disclosure of classified

Lockerbie Trial to Begin After Largest International Murder Probe, ASSOCIATED PRESS, May 3, 2000; T.R. Reid, *For Lockerbie Families, Day in Court Arrives; Trial of 2 Libyans Opening in Netherlands*, INT’L HERALD TRIBUNE, May 3, 2000.

157. For a detailed description of the charges, with links to the indictment, see <http://www.law.gla.ac.uk/lockerbie/chargessummary.cfm>.

158. *United States v. bin Laden*, 126 F. Supp. 2d 264 (S.D.N.Y. 2000).

159. *Id.* at 273.

160. *United States v. bin Laden*, 92 F. Supp. 2d 189, 216-20 (S.D.N.Y. 2000).

161. 28 U.S.C. § 1605(a)(7) (Supp. IV 1998).

162. See *U.S. Judge Orders Iran to Pay Millions to Ex-Hostage and Family*, N.Y. TIMES, Mar. 25, 2000.

163. See *More than 120 Nations Sign New UN Convention on Transnational Organized Crime*, U.N. Doc. L/T/4359, Dec. 15, 2000.

164. Pub. L. No. 106-567, 114 Stat. 2831 (2000).

information punishable as a felony.¹⁶⁵ Passed again by the Congress without that provision, the Act gained the president's signature.

The Act provides that no new law implementing a treaty or other international agreement will render unlawful an "otherwise lawful and authorized intelligence activity" carried out on behalf of and at the direction of the United States, unless the new law does so explicitly.¹⁶⁶ Thus, for example, intelligence officials engaged in foreign intelligence surveillance might ignore legislation intended to give effect to a treaty that guarantees a right of privacy, if the new law does not specifically address such surveillance.

The Intelligence Authorization Act also directs the Attorney General to prepare a report for the intelligence oversight committees describing authorities and procedures used by the Justice Department to determine whether or not to turn over for law enforcement purposes information collected under the Foreign Intelligence Surveillance Act (FISA).¹⁶⁷ No deadline was set for the report.

Throughout much of 1999 and 2000, headlines focused on charges that a Los Alamos physicist, Wen Ho Lee, had stolen the design of America's most advanced nuclear weapon, the W-88 warhead, and on suspicions that he had given it to China.¹⁶⁸ After an investigation lasting five years, however, and Lee's confinement for nine months, he was released in August 2000, and then pleaded guilty to a single felony count.¹⁶⁹ Accepting the plea, Judge James Parker is reported to have remarked about the government's conduct of the case, "This makes no sense to me."¹⁷⁰

In a legislative response to the Wen Ho Lee case, the Foreign Intelligence Surveillance Act (FISA)¹⁷¹ was amended to require the Attorney General personally to review and to justify in writing any decision not to approve an application for a court order for electronic surveillance or a physical search.¹⁷² The definition of "probable cause" was also expanded to allow consideration of "past activities of the target, as well as facts and circumstances relating to current or future activities of the target."¹⁷³

In the FY 2000 Intelligence Authorization Act, Congress called on the Director of Central Intelligence, the Director of the National Security Agency, and the Attorney General to submit to Congress a detailed analysis of the "legal standards employed by elements of the intelligence community in conducting signals intelligence activities, including electronic surveillance."¹⁷⁴ The required report was submitted in February.¹⁷⁵ It presents a concise

165. See The White House, *Statement by the President on the Veto of HR 4392* (Nov. 4, 2000), available at <http://clinton6.nara.gov/2000/11/2000-11-04-statement-by-the-president-on-the-veto-of-hr.html>.

166. Pub. L. No. 106-567, § 308, 114 Stat. 2831-2840.

167. *Id.* § 604(b), 114 Stat. 2853.

168. Lee was indicted for violations of the Atomic Energy Act, 42 U.S.C. § 2275 (receipt of restricted data), and 42 U.S.C. § 2276 (tampering with restricted data); and of the Espionage Act, 18 U.S.C. § 793 (gathering, transmitting or losing defense information). See *United States v. Wen Ho Lee*, 79 F. Supp. 2d 1280 (D.N.M. 1999).

169. A detailed summary may be found in Matthew Purdy, *The Making of a Suspect: The Case of Wen Ho Lee*, N.Y. TIMES, Feb. 4, 2001; and Matthew Purdy with James Sterngold, *The Prosecution Unravels: The Case of Wen Ho Lee*, N.Y. TIMES, Feb. 5, 2001.

170. Quoted in Purdy, *The Prosecution Unravels*, *supra* note 169.

171. 50 U.S.C. §§ 1801-1829 (1994 & Supp. IV 1998).

172. Pub. L. No. 106-567, §§ 602(a), 603(a), 114 Stat. 2831, 2851-2852.

173. *Id.* §§ 602(b), 603(b), 114 Stat. 2831, 2851-2853.

174. Pub. L. No. 106-120, § 309, 113 Stat. 1606, 1613 (1999).

175. *Legal Standards for the Intelligence Community in Conducting Electronic Surveillance*, Feb. 8, 2000, available at <http://www.fas.org/irp/nsa/standards.html>.

review of procedures and limits on investigations under FISA and Executive Order No. 12,333,¹⁷⁶ emphasizing protections for the individual rights of U.S. persons. The report does not, however, address the rights of aliens lawfully in the U.S., nor does it describe classified minimization procedures for the acquisition, retention, and dissemination of intelligence information. It also fails clearly to set out limits on intelligence collection abroad or to describe authorities for surveillance of persons not shown to be agents of a foreign power. Moreover, it offers no guidance on the increasingly difficult distinction between intelligence collection and law enforcement.¹⁷⁷

The European Parliament launched a new, yearlong investigation of the Echelon worldwide electronic surveillance program operated by the United States and its English-speaking allies. One purpose was to determine whether encryption could guarantee citizens' privacy or prevent industrial espionage that could give U.S. companies an unfair advantage.¹⁷⁸

The FY 2000 Intelligence Authorization Act also called on the Director of Central Intelligence (DCI) to report to Congress within nine months describing "all activities of officers, covert agents, and employees of all elements of the intelligence community" with respect to the assassination of Chilean President Salvador Allende in 1973, the accession of General Augusto Pinochet to the presidency of Chile, and human rights violations by Pinochet's officers and agents.¹⁷⁹ The report, released in September, concluded as follows:

1. We find no information—nor did the Church Committee—that CIA or the Intelligence Committee was involved in the death of Chilean President Salvador Allende. He is believed to have committed suicide as the coup plotters closed in on him.
2. CIA actively supported the military Junta after the overthrow of Allende but did not assist Pinochet to assume the Presidency.
3. Many of Pinochet's officers were involved in systematic and widespread human rights abuses following Allende's ouster. Some of these were contacts or agents of the CIA or US military.¹⁸⁰

The report describes sustained CIA propaganda efforts in Chile, covert expenditures of millions of dollars to strengthen opposition political parties, and the arming and encouragement of a 1970 coup attempt that left the head of the Army dead. It insists, however, that while the CIA was aware of coup plotting in 1973, it "did not instigate the coup that ended Allende's government," although it "probably appeared to condone it."¹⁸¹ After Pinochet came to power, the agency recognized widespread human rights abuses by Chilean security services, including "Operation Condor," but concluded that its continued contact with them was "necessary for CIA's mission."¹⁸² The report points an accusing finger at President Nixon and his National Security Advisor Henry Kissinger, calling Agency actions

176. 46 Fed. Reg. 59,941 (1981).

177. See William C. Banks, *Trolling for Terrorists: New Report Outlines Surveillance Authorities*, NATIONAL SECURITY L. REP. (ABA Standing Comm. on Law & National Security), May-June 2000, at 10.

178. The investigation is described at http://www.europarl.eu.int/press/index_recherche_en.htm. See also Tom Zeller, *Cloak, Dagger, Echelon*, N.Y. TIMES, July 16, 2000; Thomas Catan, *Secrets and Spies*, FIN. TIMES (London), May 31, 2000.

179. Pub. L. No. 106-120, § 311, 113 Stat. 1606, 1614 (1999).

180. Central Intelligence Agency, *CIA Activities in Chile* (Sept. 18, 2000), available at <http://www.cia.gov/cia/publications/chile/index.html>.

181. *Id.*

182. *Id.*

“deeply rooted in the policy of the period,”¹⁸³ and suggests that under today’s standards the CIA might have behaved differently.

In one closely watched *Bivens* action, a D.C. Circuit Court of Appeals panel decided that the CIA’s alleged participation in the torture and murder of a Guatemalan citizen “shock[ed] the conscience.”¹⁸⁴ However, relying on dictum in the Supreme Court’s 1990 decision in *United States v. Verdugo-Urquidez*,¹⁸⁵ the court declared that the Fifth Amendment does not prohibit the torture abroad of nonresident foreign nationals who have not “developed substantial connections with this country.”¹⁸⁶ Despite allegations of conspiracy among several agencies inside the United States to abet the torture, the court said, the “primary constitutionally significant conduct”—the torture of the decedent—occurred elsewhere.¹⁸⁷ No mention was made of the 1980 Second Circuit decision in *Filartiga v. Peña-Irala*, which declared the “universal condemnation of torture.”¹⁸⁸

In the same case, however, the court ruled that when the CIA, National Security Council, and State Department deliberately misled the plaintiff—the murdered Guatemalan’s widow—by falsely denying that they had information about the case, they deprived her of her constitutional right to seek legal redress, even though they may have had no duty to disclose the information to her. Had she known that the information existed, said the court, she might have filed a FOIA request, petitioned appropriate government authorities, sought an emergency injunction based on a tort claim, or publicized her husband’s plight through the media, perhaps in time to save his life.¹⁸⁹ The ruling may have implications for agency reliance on the so-called *Glomar* response in FOIA and state secrets cases, when the government claims that it can neither confirm nor deny the existence of requested information.¹⁹⁰ The court also decided that agency officials enjoyed no qualified immunity when they affirmatively misled the plaintiff “for the purpose of protecting themselves from being held accountable in a court of law.”¹⁹¹

V. Information Security

The Information Security Oversight Office reported that in FY 1999 more than eight million documents, an increase of 10 percent over the previous year, were classified by federal agencies.¹⁹² However, nearly 127 million pages of agency records, including many more than twenty-five-years old, were declassified under the automatic and systematic declassification provisions of Executive Order 12,958,¹⁹³ while another 84,000 pages were declassified, in whole or in part, under mandatory review provisions of the same order.¹⁹⁴ The report bemoans the fact that declassification “has increasingly been adversely affected

183. *Id.*

184. *Harbury v. Deutch*, 233 F.3d 596 (D.C. Cir. 2000).

185. *United States v. Verdugo-Urquidez*, 494 U.S. 259 (1990).

186. *Harbury*, 233 F.3d at 603.

187. *Id.*

188. *Filartiga v. Peña-Irala*, 630 F.2d 876, 880 (2d Cir. 1980).

189. *Harbury*, 233 F.3d at 608-610.

190. See *Phillippi v. CIA*, 546 F.2d 1009 (D.C. Cir. 1976); Exec. Order No. 12,958, § 3.7(a), 60 Fed. Reg. 19,825 (1995); and 5 U.S.C. § 552(c)(3) (1994).

191. *Harbury*, 233 F.3d at 610-611.

192. Information Security Oversight Office, *1999 Report to the President* (Aug. 15, 2000), available at <http://www.fas.org/ssgp/isoo/isoo99.html>.

193. Exec. Order No. 12,958, §§ 3.4 and 3.5, 60 Fed. Reg. 19,825 (1995).

194. *Id.* § 3.6.

by partisan politics.”¹⁹⁵ Evidence could be found in a 40 percent reduction in funding for declassification activities by DOD in the FY 2001 Defense Authorization Act.¹⁹⁶

Another provision of the FY 2001 Defense Authorization Act effectively amended FOIA by exempting from disclosure “sensitive information” provided by or produced in cooperation with a foreign government or international organization with the understanding that it would not be released to the public, or if its withholding is requested by a foreign government or international organization, or if its release would make it more difficult for the U.S. government to get the same kind of information in the future.¹⁹⁷

In the wake of the Wen Ho Lee controversy and the temporary loss of hard drives containing critical data at Los Alamos, the Departments of Energy and Defense proposed a new classification category—called Sigma 16—to give increased protection to some of the nation’s most sensitive nuclear weapons information.¹⁹⁸ But the two departments failed to agree on a DOE proposal to declassify nuclear weapons data that it no longer considers sensitive, including total stockpile quantities, and a breakdown of those quantities by purpose, delivery system, and active or inactive status.¹⁹⁹

The FY 2001 Intelligence Authorization Act creates a Public Interest Declassification Board to advise on policy regarding the classification of national security information, to promote “the fullest possible public access to a thorough, accurate, and reliable documentary record of significant United States national security decisions and . . . activities,” and to make recommendations on the declassification and release of information that is of “archival value.”²⁰⁰ While the measure could be read as laying the groundwork for reductions in public access to such information, it includes a provision that gives an agency head discretion to release “properly classified” information on the basis of a determination that “the public’s interest in the disclosure of records or materials of the agency . . . outweighs the Government’s need to protect” them.²⁰¹

On April 16 and May 18, 2000, the *New York Times* published extensive information and excerpts from a classified C.I.A. history of the agency’s involvement with British officials in the 1953 coup in Iran that toppled Prime Minister Mohammed Mossadegh and replaced him with a reluctant Shah Mohammed Reza Pahlevi.²⁰² The report revealed that agency

195. Information Security Oversight Office, *supra* note 192, at 5.

196. National Defense Authorization Act for Fiscal Year 2001, Pub. L. No. 106-398, § 1075, 114 Stat. 1654, 1654A-280 (2000).

197. *Id.* § 1073, 114 Stat. 1654A-277.

198. See Dept. of Defense, Department of Energy & National Nuclear Security Admin., *Report of the Joint Policy Group for the Protection of Nuclear Weapons Design and Use Control Information* (Dec. 7, 2000), available at http://www.fas.org/sgp/othergov/doe/joint_report.html.

199. See *Pentagon Blocks DOE Declassification Actions*, *SECURITY NEWS*, Jan. 4, 2001, available at <http://www.fas.org/sgp/news/secretcy/2001/01/010401.html>. Much information of this sort can be found currently in the NUCLEAR WEAPONS DATABOOKS series published by the Natural Resources Defense Council, e.g., William M. Arkin, Robert S. Norris, & Joshua Handler, *TAKING STOCK: WORLDWIDE NUCLEAR DEPLOYMENTS 1998* (1998).

200. Intelligence Authorization Act for Fiscal Year 2001, Pub. L. No. 106-567, § 703(b), 114 Stat. 2831, 2856-2859 (2000).

201. *Id.* § 706(c), 114 Stat. 2831, 2862.

202. See James Risén, *Secrets of History: The History of the CIA in Iran*, *N.Y. TIMES ON THE WEB*, available at <http://www.nytimes.com/library/world/mideast/041600iran-cia-index.html>; National Security Archive, *The Secret CIA History of the Iran Coup, 1953* (Nov. 29, 2000), available at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB28/index.html>, with links to the documents.

officials worked directly with Iranian royalist military officers to pick Mossadegh's successor, directed a campaign of bombings by Iranians posing as members of the Communist Party, and planted articles and editorial cartoons in newspapers, then provided funding for the new government.

November saw the release of some 50,000 pages of previously classified records concerning the death of President Salvador Allende and the accession of Augusto Pinochet as head of Chile's government.²⁰³ This was the last of four installments under the Clinton administration's special Chile Declassification Project. The documents trace U.S. covert operations between 1968 and 1975 to destabilize the democratically elected Allende government and, after the violent 1973 coup, to bolster the military regime of Pinochet. They record Richard Nixon's commitment to "do everything we can to bring Allende down."²⁰⁴ Hailed as a victory for "human rights abroad and the American public's right-to-know at home,"²⁰⁵ the release provides new information for historians and for litigants.

Late in the year, Secretary of State Madeleine Albright ordered the declassification review and release of State Department documents relating to human rights violations in Argentina during the 1976-1983 military dictatorship there.²⁰⁶ The order came in response to mutual legal assistance treaty requests from the governments of Spain and Argentina.

President Clinton extended an almost unprecedented exemption from disclosure of classified information concerning Air Force compliance with the Resource Conservation and Recovery Act at the secretive Groom Lake, Nevada, air base known as Area 51.²⁰⁷

The Fourth Circuit Court of Appeals upheld a lower court refusal to issue a subpoena duces tecum for records admittedly held by the National Security Agency (NSA) relating to Princess Diana.²⁰⁸ Ruling on an application under 28 U.S.C. § 1782, which authorizes a district court to order production of statements or documents for use in proceedings in a foreign or international tribunal, the appeals courts said the applicant should have demonstrated how the information sought would assist his participation in proceedings before a French court, and how its production would encourage foreign governments to honor similar requests from litigants in U.S. courts. More important, the court declared that § 1782 "simply did not anticipate the issuance of a subpoena for documents whose disclosure would likely harm the national security."²⁰⁹ The court neglected to mention that the statute expressly preserves the right to invoke "any legally applicable privilege,"²¹⁰ including, presumably, the state secrets privilege, something the NSA apparently failed to do in this case.

In another case with security implications, a Florida district court granted a FOIA request for information about licenses for the export of goods and services to Cuba.²¹¹ The government insisted that denial was authorized by FOIA Exemption 3, which permits withholding of records that are "specifically exempted from disclosure by statute."²¹² Although

203. See National Security Archive, *Chile: 16,000 Secret U.S. Documents Declassified* (Nov. 13, 2000), available at <http://www.gwu.edu/~nsarchiv/news/20001113>, with links to the released documents.

204. *Id.*

205. *Id.*

206. United States Dept. of State, *Statement by Charles F. Hunter, Acting Spokesman* (Nov. 17, 2000), available at www.fas.org/sgp/news/2000/11/dos1117000.html.

207. Presidential Determination No. 2000-30, Sept. 19, 2000, 65 Fed. Reg. 59,339 (2000).

208. *Al Fayed v. United States*, 210 F.3d 421 (4th Cir. 2000).

209. *Id.* at 425.

210. 28 U.S.C. § 1782.

211. *Times Publishing Co. v. United States Dept. of Commerce*, 104 F. Supp. 2d 1361 (M.D. Fla. 2000).

212. 5 U.S.C. § 552(b)(3) (1994).

there was no relevant act of Congress in force, the government relied on an executive order issued under the International Economic Emergency Powers Act (IEEPA)²¹³ to extend the effectiveness of the lapsed Export Administration Act (EAA),²¹⁴ § 12(c) of which would have expressly permitted the withholding. In the first week of 2001, however, the Eleventh Circuit Court of Appeals reversed on grounds that when Congress subsequently reenacted the EAA, a single Senator's remarks in the legislative history and the president's signing statement(!) showed Congress's intent for the executive order to extend the effect of the statute in the interim.²¹⁵

213. 50 U.S.C. §§ 1601-1651 (1994).

214. 50 U.S.C. App. §§ 2411(c) (1994).

215. *Times Publishing Co. v. United States*, 236 F.3d 1286 (11th Cir. 2001).

