

TIME TO ACT: A REVIEW OF LEGISLATION TO PREVENT THE PROLIFERATION OF NUCLEAR WEAPONS

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I. INTRODUCTION

While the news media and television's "talking heads" may portray America's security policies as defined primarily by the White House and Pentagon, Congressional action significantly shapes these

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policies.¹

Much of what is widely known about Congress' work on national security comes out in debates on the military's budget, the size and state of the military, or controversial programs like the national missile defense shield.² However, work on an equally significant component of national security often goes largely unnoticed – efforts to stem the threat of proliferation of nuclear, chemical and biological weapons from the former Soviet states.³ Unsecured nuclear material is a bigger threat to our national security today than it has ever been.⁴

The need to increase current U.S. nonproliferation efforts is underscored by a recent report by the National Intelligence Council, an analytical group that reports to the CIA Director.⁵ The unclassified intelligence report to Congress says that Russia's nuclear material is vulnerable to terrorist and internal theft and confirms what many nonproliferation experts have long feared – that “weapons-grade and

¹ U.S. CONST. art. II, § 2, cl. 2. The U.S. Constitution provides that the President “shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur. . .” *Id.* But, modern presidents have cited executive authority to enter binding international agreements, without Senate approval. See Thom Shanker, *Bush Appears Eager Now to Sign a Nuclear Pact with Russia*, N.Y. TIMES, Mar. 14, 2002, at Section A; Page 8; Column 1 [hereinafter Shanker, *Bush Eager*]; Thom Shanker, *Senators Insist on Role in Nuclear Arms Deals*, N.Y. TIMES, Mar. 17, 2002, at Section 1; Page 16; Column 4 [hereinafter Shanker, *Senators Insist*]. Senators Joseph R. Biden Jr. (D-DE) and Jesse Helms (R-NC), ranking member on the Senate Foreign Relations Committee, have written President George W. Bush demanding that any nuclear arms reductions with Russia be submitted to the Senate as a formal treaty. *Id.*

² U.S. CONST. art. I, § 8, cl. 16. The Constitution provides that Congress shall “provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States. . .” *Id.*

³ *Press Conference with Russian Experts Vladimir Dvorkin, Alexander Zhgutov, Sergei Oznobishchev and Mikhail Pogorely on President Bush's Nuclear Strategy* (Official Kremlin Int'l News Broadcast, Mar. 21, 2002). Mr. Pogorely, the Director of the War and Peace Journalism Center, commenting on Congress' approval of the Nuclear Posture Review, stated:

It was introduced at the Congress on December 31, on New Year's eve. Naturally, American Congressmen were not reading documents over the New Year holiday. So, the first reaction became known only on January 7-8 . . . It passed largely unnoticed until the following day when it was reprinted by The Los Angeles Times.

Id.

⁴ Editorial Board, *Nuclear Weapons Subtraction*, N.Y. TIMES, Jan. 12, 2002, at Section A; Page 14; Column 1.

⁵ NATIONAL INTELLIGENCE COUNCIL, ANNUAL REPORT TO CONGRESS ON THE SAFETY AND SECURITY OF RUSSIAN NUCLEAR FACILITIES AND MILITARY FORCES (Mar. 2002) available at <http://www.cia.gov/nic/pubs/index.html>.

weapons-usable nuclear materials have been stolen from some Russian institutes.”⁶

Last summer, the Non-Proliferation Project of the Carnegie Endowment for International Peace released a landmark report, *Russia's Nuclear and Missile Complex: The Human Factor in Proliferation*, that provided the first-ever detailed statistical look inside the Russian military complex, based on surveys conducted in five Russian nuclear cities and three missile enterprises.⁷ The results were terrifying. The study pointed to the increasing risk that Russian nuclear and missile experts – pampered during the Soviet era and now living in depressed economic conditions – may sell their knowledge or military equipment and demonstrated their willingness to work in the military enterprises of proliferant states.⁸ The report's findings are terrifying: More than 62 percent of employees earn less than \$50 per month; 58 percent of experts are forced to take second jobs to earn money; 14 percent of experts would like to work outside of Russia; and 6 percent express interest in moving “any place at all.”⁹

Other groups have also taken an active role in nuclear nonproliferation. I am working with the Vietnam Veterans of America Foundation's Nuclear Threat Reduction Campaign, which is pursuing pragmatic and effective steps to reduce the very serious threats associated with nuclear and biological weapons.¹⁰ Additionally, the Nuclear Threat Initiative was established by CNN founder Ted Turner and former Senator Sam Nunn to reduce the risk and prevent the spread of weapons of mass destruction.¹¹

Given the dismal Russian financial picture and the ever-changing world we live in, these groups recognize that Congress has a limited but

⁶ *Id.* at ¶ 9.

⁷ CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, *RUSSIA'S NUCLEAR AND MISSILE COMPLEX: THE HUMAN FACTOR IN PROLIFERATION* (Apr. 2001) download available at <http://www.ceip.org/files/projects/npp/resources/humanfactorflyer.html>. Cities surveyed for this report include the nuclear cities of Sarov, Snezhinsk, Seversk, Zarechniy, and Trekgorniy and the missile enterprises located in Miass, Votkinsk, and Korolev. *Id.* at ¶ 12.

⁸ *Id.* at ¶ 1.

⁹ *Id.* at ¶ 2.

¹⁰ About the Campaign, Nuclear Threat Reduction Campaign website (last visited Mar. 28, 2002) available at <http://justice.policy.net/ntrc/about/>.

¹¹ CNN, Ted Turner, Sam Nunn Announce Nuclear Threat Initiative (Jan. 7, 2001) available at <http://www.fyi.cnn.com/2001/US/01/08/turner.foundation/>. Turner, a media mogul, has pledged \$50 million a year for five years to support the foundation dedicated to lessen the threat posed by weapons of mass destruction—nuclear, chemical and biological—around the globe. *Id.* This organization's website is www.nti.org.

critical opportunity to secure nuclear material in Russia.¹²

As the Ranking Member of the House Armed Services Committee panel that oversees the National Nuclear Security Administration, ensuring the safety and reliability of the United States' nuclear stockpile without live testing and preventing the proliferation of weapons from the former Soviet states are issues to which I devote significant time in Congress.¹³

This article will discuss some of these efforts through a review of current legislation and Congressional activity on two bills that I have introduced.

II. STEMMING THE THREAT OF NUCLEAR WEAPONS: THE NUCLEAR THREAT REDUCTION ACTS

The Nuclear Threat Reduction Act, which was introduced last summer, and follow-up legislation called the Nuclear Threat Reduction Act II, which was introduced in April, focus on pragmatic and effective steps to reduce the threat of the use of nuclear weapons as a result of an accident, miscalculation or terrorist act.¹⁴ The bills take a comprehensive approach to decreasing the threats currently posed by Russia's deteriorating nuclear infrastructure and the risk of unemployed Russian nuclear scientists looking for work with hostile states or terrorist groups seeking to develop their own nuclear arsenals.¹⁵

The initial legislation was based on three main principles – reducing the number of nuclear warheads, taking as many weapons as possible off “high alert” status, and protecting Russian nuclear weapons and scientists' know-how in light of the country's weak economy.¹⁶

¹² *Id.* at ¶ 7.

¹³ Tauscher, Biography (last visited Mar. 28, 2002) available at <http://www.house.gov/tauscher/biography.html>.

¹⁴ Nuclear Threat Reduction Act of 2001, H.R. 2351, 107th Cong. (2001). This bill was introduced by Rep. John M. Spratt (D-SC) and Rep. Ellen Tauscher and was first referred to the House Committee on International Relations and House Armed Services on June 27, 2001. *Id.* This bill was sponsored by Rep. Ellen Tauscher on June 27, 2001 and Rep. Anna G. Eshoo (D-CA) on December 13, 2001. *Id.*

¹⁵ *Id.*

¹⁶ Press Release, Rep. Ellen Tauscher Announces Major Effort to Stem Threat of Nuclear Weapons (June 27, 2001) available at <http://www.house.gov/tauscher/press/06-27-01.htm>. The legislation is based on three main principles – reducing the number of nuclear warheads, taking as many weapons as possible off “high alert” status, and protecting Russian nuclear weapons and scientists' know-how in light of the country's weak economy. *Id.*

The second Nuclear Threat Reduction Act also acknowledges that America's national security is tied to the security of Russia's nuclear arsenal. Specifically, the legislation calls for expanded accountability and inventory of weapons of mass destruction in the U.S. and Russia, giving the President the authority to expedite funding for nonproliferation programs as a matter of national security, clarifying the weapons reductions proposed in the nuclear posture review, and requiring Congressional notification of nuclear testing. Like the first Nuclear Threat Reduction Act, it also calls for increased funding for nonproliferation efforts – a key piece of the global nuclear security puzzle.

A. *Reducing the Number of Nuclear Warheads*

To reduce the number of American and Russian warheads, it is necessary to establish a new U.S. policy to reach agreement with Russia on cuts to both countries' nuclear arsenals. The Nuclear Threat Reduction Act would repeal the existing law that prohibits reducing each country's arsenal to levels below 6,000 warheads, established 10 years ago under START I.¹⁷

The bill also provides for unilateral reductions when necessary to spur the arms control process.¹⁸ This comports with President Bush's repeated statement that it is time for the U.S. to "lead by example."¹⁹ The goal is to reduce *both* the U.S. and Russian nuclear forces, with formal international agreements to verify and enforce reductions.²⁰ The legislation would also make it United States policy to pursue reductions in the U.S. and Russian arsenals through bilateral agreements, and thereby get the number of U.S. weapons to the lowest possible

¹⁷ *Id.* The Nuclear Threat Reduction Act would repeal the existing law that prohibits reducing each country's arsenal to levels below 6,000 warheads, established 10 years ago under START I. *Id.*

¹⁸ *Id.* The bill also provides for unilateral reductions when necessary to spur the arms control process. *Id.*

¹⁹ President Bush, Remarks by the President to Students and Faculty at National Defense University (May 1, 2001). This comports with President Bush's repeated statement that it is time for the U.S. to "lead by example." *Id.* During President Bush's speech he announced the country's commitment in "achieving a credible deterrent" with the least amount of nuclear weapons which conforms with the national security needs our country and our allies. *Id.* The President concluded that the objective was "to move quickly" in order decrease nuclear forces. *Id.*

²⁰ H.R. 2351.

consistent with our national security interests.²¹

The Nuclear Threat Reduction Act leaves the determination of how deep the reductions should be to the President and his military advisers.²² As a candidate, President Bush indicated that he would unilaterally cut America's nuclear arsenal at least to the START II level, or 3,000 to 3,500 warheads.²³ Some experts have urged going to 1,000 or fewer warheads.²⁴ The treaty signed at the recent summit in Moscow will reduce both nation's nuclear stockpiles to between 1,700 and 2,200 nuclear weapons.²⁵

B. *Taking Weapons Off High Alert Status*

Russian systems are reported to malfunction frequently, including switching to combat mode for no apparent reason, and there are serious gaps in Russia's early warning systems.²⁶

A startling example of this occurred on January 25, 1995, when Russian radar picked up what was believed to have been a missile headed for Russia.²⁷ The "missile" had been launched from Norway, the coast of which is patrolled by allied submarines carrying multiple-warhead ballistic missiles.²⁸ President Yeltsin was swiftly notified and

²¹ H.R. 2351 § 3(b).

²² *Id.*

²³ Judy Keen, *Bush Promises to Reduce U.S. Nukes Even if Russians Balk Plan Includes Building Shield Against Missiles*, USA TODAY, May 24, 2000, ¶ 1, 7, available at http://www.nexis.com/research/search/documentDisplay?_docnum=56&_ansset=A-WA-A-C.

²⁴ James Kitfield, *Is Arms Control Dead?*, THE NAT'L J., July 14, 2001, available at http://www.nexis.com/research/search/documentDisplay?_docnum=2&_ansset=A-WD-B-C.

²⁵ Karl F. Inderfurth, *Leftovers From an Old War*, N.Y. TIMES, Nov. 7, 2001, at A23. President Putin has indicated that both countries, Russia and United States, should reduce strategic warheads to 1,500. *Id.* See also Press Release, Historic Opportunity: Clinton has a real chance for Nuclear Arms Reduction (June 2, 2000) available at www.house.gov/tauscher/issues/op-ed-nuclear-0600.html. Rep. Tauscher has suggested that since Russia cannot afford to maintain the amount of nuclear weapons it currently has, the President should easily be able to reduce the number of weapons maintained by both Russia and the United States to below 2,000. *Id.*

²⁶ Bill Powell, *A Looming Disaster?*, NEWSWEEK, June 23, 1997, at 50. Both U.S. and Russian forces were able to confirm the malfunctions in the Russian systems. See also David Hoffman, *Cold-War Doctrines Refuse to Die; False Alert After '95 Rocket Launch Shows Fragility of Aging Safeguards*, THE WASH. POST, Mar. 15, 1998, at A1. The gaps in the Russian systems stem from problems with the radar and satellites systems. *Id.*

²⁷ Hoffman, *supra* note 26, at A1.

²⁸ United States Navy, Atlantic Fleet Fact Board available at

met with his top advisors.²⁹ As radar crews tracked the missile, its trajectory was initially unclear.³⁰ Not until after eight minutes was it was evident that the rocket was headed into to the sea.³¹ The entire time, President Yeltsin had the ability, and arguably a reason, to order Russian nuclear weapons fired in response.³² Luckily, he waited. The “missile” was actually a U.S. scientific rocket launched from Norway.³³ Russian officials had been notified about the planned launch weeks earlier, but the information had not been passed on to the proper authorities.³⁴

These serious gaps in Russia’s command and control underscore the need to take weapons off “high alert” status in order to reduce the risk of a Russian attack as the result of an accident, miscalculation or unauthorized launch. As such, the Nuclear Threat Reduction Act declares that it is the policy of the United States to remove as many nuclear warheads as possible from high alert consistent with our security needs; encourage Russia to reciprocate; and enter into arrangements with Russia to provide for the transparency and verification of the reduced alert status.³⁵

<http://www.atlanticfleet.navy.mil/factbrd.htm>, last visited Mar. 28, 2002. The Commander in Chief of U.S. Atlantic Fleet states that there are 38 submarines commissioned in the Atlantic Fleet. *Id.* David Hoffman reported that a U.S. joint research rocket had been launched from an island off Norway’s coast. Hoffman, *supra* note 26, at A1.

²⁹ *Id.* Within minutes of being notified that a rocket was spotted, President Boris Yeltsin communicated with his defense minister and was brought his black nuclear-command suitcase. *Id.* This was said to be a very dangerous moment in the age of nuclear weapons.

³⁰ *Id.* It was unclear to Anatoly Sokolov, the Commander of the Russian radar forces, what type of missile was launched and what its target was. *Id.* The missile’s trajectory was unclear because the trajectory of a civilian missile and that of a nuclear missile look similar. *Id.*

³¹ *Id.*

³² *Id.* On Jan. 25, 1995, the Russian forces were advised to get ready for combat. *Id.* President Yeltsin would have had to make a decision to “launch-on-warning” which was a crucial decision to make in the nuclear age. *Id.* Luckily, it did not become necessary to make this crucial decision due to a “false alarm.” *Id.*

³³ *Id.* The missile was a Black Brant XII, which is a four-stage Norwegian-U.S. joint research rocket. *Id.*

³⁴ Bruce G. Blair, Harold A. Feiveson and Frank N. von Hippel, *Taking Nuclear Weapons off Hair-Trigger Alert*, SCIENTIFIC AMERICAN, available at <http://www.sciam.com/1197issue/1197vonhippel.html> (last visited March 28, 2002). U.S. officials had notified Russian authorities of the launch planned from the island of Andoya, weeks prior to the launch. *Id.*

³⁵ H.R. 2351 §4 (a).

(a) STATEMENT OF POLICY – It is the policy of the United States to pursue

C. *Increasing Funding for Nonproliferation Programs*

Outside the U.S., Russia possesses over 95 percent of the world's nuclear weapons and material. There are more than 20,000 Russian weapons scientists who have knowledge that could aid terrorists seeking to develop weapons of mass destruction. Moreover, the Russians have produced thousands of tons of the viruses that could lead to a serious bioterrorism threat.

Accelerating programs to prevent the proliferation of deadly materials and expertise is a key goal of both the initial and second Nuclear Threat Reduction Acts. Thus, the legislation would increase funding for nonproliferation programs to reflect the scope and urgency of the situation in which we now find ourselves.³⁶

Both bills would increase funding for non-proliferation programs which Russia and help find peaceful employment for Russian scientists outside terrorist organizations and states seeking to develop their own nuclear arsenals.

The first bill also calls upon President Bush to submit a plan to secure and neutralize all weapons-usable material in Russia.³⁷ Russia has enough fissile material to build at least 60,000 weapons, much of which is alarmingly insecure.³⁸ My own personal experience in a former "closed city" in Russia a few years ago illustrates just how few

with Russia formal arrangements to remove as many nuclear weapons of those two nations as feasible from immediate, launch-ready (or 'high alert') status, consistent with the national security of the United States, concentrating on those weapons earmarked for downloading, dismantlement, or elimination under the START II treaty. Such arrangements should seek to ensure that any change in the alert status of such weapons of either nation be transparent and verifiable.

Id.

³⁶ H.R. 2351 §5 (a) (1)-(3) and (b). *See also infra* note 24. The Nunn-Lugar Cooperative Threat Reduction program has caused the deactivation of 5,000 Russian nuclear warheads and destroyed hundreds of Russian missiles as of July 2001. *Id.*

³⁷ H.R. 2351 §5 (c) (1) (A) (2001). This plan is to neutralize and secure all nuclear weapons and weapons-usable nuclear material in Russia over an eight-year period. *Id.* The plan is due for submission to Congress no later than Apr. 15, 2002. *Id.*

³⁸ Carnegie Endowment for International Peace, *Senator Carl Levin on Missile Defense*, available

<http://www.ceip.org/files/nonprolif/templates/Publications.asp?p=8&PublicationID=709>, (last visited Apr. 3, 2002). U.S. must work with Russia to reduce the threat of Russia selling its nuclear weapon supply to pay down its debt, inasmuch as Russia has the capacity to build at least 60,000 weapons from massive amount of plutonium and uranium available. *Id.*

security measures were in place.³⁹ When I asked about the inventory and control system used in Russia's vast nuclear weapons complex, the response was, "With all due respect, when we have an inventory, we will have a control system."

The development of a nuclear black market in Russia — in the words of former Senate Republican Leader Howard Baker, "a Home Depot for terrorists" — would pose an enormous threat to America's security.⁴⁰ According to the bipartisan Baker-Cutler Task Force, led by Baker and former White House Counsel Lloyd Cutler, the proliferation of Russian nuclear weapons and know-how is "the most urgent unmet national security threat to the United States today."⁴¹ The task force concluded that America needs "a wake-up call" and that increased funding for nonproliferation programs is essential.⁴²

Current programs to prevent the proliferation of Russian nuclear weapons or weapons-grade material, as well as the expertise of Russia's unemployed or underpaid nuclear scientists, have been successful.⁴³

³⁹ Tauscher, *Nuclear Threats in the Post-Cold War Era*, CONTRA COSTA SUN. TIMES, Sept. 20, 1999. Rep. Tauscher visited Russia twice in 1999 to assist with its goals of the Nuclear Cities Initiative. *Id.* During her visit, she observed just how few security measures were in place to prevent theft or any other possible mishap. For example, a nuclear center had no security devices, such as access control gates, locks, or detectors for radioactive or metal materials at any of the center's entrances. *Id.* In addition, the nuclear center had no accounting system to determine the amount of radioactive material in their possession or the location of the material. *Id.*

⁴⁰ HOWARD BAKER AND LLOYD CUTLER, CO-CHAIRS, RUSSIA TASK FORCE, A REPORT CARD ON THE DEPARTMENT OF ENERGY'S NONPROLIFERATION PROGRAMS WITH RUSSIA, U.S. DEP'T OF ENERGY SEC. OF ENERGY ADVISORY BOARD, January 10, 2001, available at <http://www.ceip.org/files/projects/npp/pdf/DOERussiaTaskForceReport011001.pdf> (last visited Apr. 6, 2002).

⁴¹ Carnegie Endowment for International Peace, *Cutler Tell Senate Russian Programs Key to National Security*, available at <http://www.ceip.org/files/projects/npp/resources/bakercutler.htm>, (last visited April 6, 2002). Baker and Cutler testified that the nation should be aware of the potential sale or transfer of nuclear weapons by Russia, which necessitates this issue being dealt with on an urgent basis. *Id.*

⁴² *Id.* The task force determined the need for nonproliferation programs was not only essential but urgent for the U.S. to address. *Id.*

⁴³ Peter Grier, *Loose Nukes*, THE CHRISTIAN SCIENCE MONITOR, Dec. 5, 2001, available at <http://www.csmonitor.com/2001/1205/pls3-wogi.html>, (last visited Apr. 6, 2002). The US has been involved in cooperative programs with Russia to control its loose nuclear weapons and material for years. *Id.* Since 1991, U.S. money has paid for the deactivation of more than 5,000 Russian nuclear warheads. *Id.* It has provided security equipment for dozens of facilities, helped construct a secure storage facility for fissile material, and paid for science and technology centers intended to provide ex-weapons scientists the means to work on civilian research. *Id.*

Congress should take full advantage of the opportunity to build on the significant accomplishments of these nonproliferation efforts by dramatically increasing funding for the Cooperative Threat Reduction Initiative, commonly referred to as Nunn-Lugar programs.⁴⁴

Through programs associated with the Nunn-Lugar legislation of 1991, more nuclear weapons have been removed from service in the former Soviet Union than currently reside in the stockpiles of the China, France and the United Kingdom combined.⁴⁵ Through our cooperative programs with Russia, we have eliminated 258 Intercontinental Ballistic Missiles, 50 ICBM silos, 42 Heavy Bombers and 17 ballistic missile submarines.⁴⁶ And this is only a small piece of what has been accomplished.

Congress needs to fund nonproliferation programs at a minimum of \$2 billion next year. While it may seem to be a significant investment, it is a relatively small amount in comparison to the entire federal defense budget, and the only proven effective way to literally “buy down the risk” of nuclear weapons.⁴⁷

D. Expanded Accountability and Inventory of Weapons of Mass Destruction in the U.S. and Russia

A recent CIA report faulted the security at Russian nuclear arsenal facilities, stating that “undetected smuggling has occurred.” Recognizing the shortcomings in the Russian system for accounting for nuclear warheads and weapons-grade material, the U.S. should assist Russia in establishing comprehensive inventories and data exchanges of Russian and U.S. nuclear, chemical, and biological weapons of mass

⁴⁴ Council for a Livable World, *U.S.-Russian Non-Proliferation Programs: Legislative Update and Talking Points*, Dec. 13, 2001, available at <http://www.clw.org/control/prolifitalk.html> (last visited Apr. 3, 2002). The Senate has passed the Department of Defense Appropriations Act for fiscal year 2002 as described in H.R. 3338, which restored \$46 million to the Nunn-Lugar Cooperative Threat Reduction Program. *Id.*

⁴⁵ *Hearing of the Emerging Threats Subcommittee of the Senate Armed Services Committee*, 105th Cong. (March 23, 1999) (testimony of U.S. Sen. Dick Lugar, Senior Republican member on the Senate Foreign Relations and Intelligence Committees) available at <http://www.senate.gov/~lugar/990323.htm> (last visited April 6, 2002).

⁴⁶ Press Release, Statement on Nonproliferation Report, Carnegie Endowment's Report on “The Human Factor in Proliferation” Underscores Importance of Programs (May 2, 2001) available at <http://www.house.gov/tauscher/press/05-02-01.htm>.

⁴⁷ Tauscher, *supra* note 39; Tauscher, *It's Too Early to Make a Decision on National Missile Defense*, L A TIMES, Mar. 27, 2000.

destruction with particular attention to tactical warheads – one of the most likely weapons a terrorist organization or state would acquire – and also on weapons that have been removed from deployment.

E. *Cooperative Threat Reduction Waiver Authority*

In a supplemental appropriations request to Congress, President Bush asked for the authority to expedite funding to reduce and prevent the proliferation of weapons of mass destruction and material for national security purposes. Recognizing that an essential priority of the United States is to reduce and prevent the proliferation of weapons of mass destruction, materials, and expertise, this bill proposed allowing the President to waive certification requirements previously placed on the cooperative threat reduction program if he judges this to be in the national security interest of the United States. This waiver ensures that these programs may be implemented unencumbered and efficiently. The Nuclear Threat Reduction Act II supported the President's request, which has since passed in the House and Senate in various forms.

F. *Nuclear Posture Review Classification*

The Nuclear Threat Reduction Act II supports the President's objective outlined at the Bush-Putin Summit last November and echoed in the nuclear posture review to achieve a level of 1,700-2,200 operationally deployed warheads. The legislation calls upon the president to report back to Congress progress on:

- The number of operationally deployed nuclear weapons;
- The number of nuclear weapons in the responsive force;
- The number of active and inactive nuclear weapons in the reserve force; and
- The number of weapons slated for dismantlement.

The bill also calls for a report from the President to Congress on how the full implementation of cuts announced by President Bush at the November 2001 Summit and outlined in the nuclear posture review could be accomplished by 2006, 2008, or 2010, as compared to the current timeline of 2012.

G. *Nuclear Testing*

The U.S. has voluntarily refrained from conducting underground nuclear tests since President Bush's father was in office in 1992. This

moratorium has helped dissuade Russia and China from testing. The Nuclear Threat Reduction Act II supports the continued moratorium, but states that if the President determines that the national security interests of the U.S. require conducting an underground nuclear test, he or she would be required to notify Congress no less than 18 months prior to the intended date of the test.

H. *Legislative prospects*

I, along with my House Armed Services Committee colleague John Spratt (D-S.C.) and Senate Armed Services Committee member Mary Landrieu (D-La.) introduced the first Nuclear Threat Reduction Act last July.⁴⁸ The Nuclear Threat Reduction Act II was introduced by myself and Congressman Spratt this April.

Even though President Bush embraced the original bill's key elements during the presidential campaign, Congress has not acted on the bill as a whole.⁴⁹ However, Congressman Spratt and I were successful at including a number of the bill's provisions in various legislative vehicles. The Defense Authorization Bill for fiscal year 2002 repealed the prohibition on reducing nuclear weapons and included language calling for a plan outlining the administration's nonproliferation objectives.⁵⁰ This bill also contained a section regarding the alert status of nuclear weapons; the specific language directs the Secretary of Defense to include a new section in the Nuclear Posture Review that would explore the possibility of deactivating or dealerting nuclear warheads or delivery systems.⁵¹ Furthermore, the legislation's increase in funding for the nonproliferation programs at the Departments of Energy, Defense and State is partly reflected in the President's fiscal year 2003 budget, although further increases are still needed.

As the Defense Authorization Bill of 2003 was passed by the House of Representative, it encourages the U.S. to develop new nuclear weapons for the first time since the Cold War, clears the way for live nuclear weapons testing in Nevada, and supports adding nuclear warhead-tipped interceptors to the national missile defense shield. It

⁴⁸ Inderfurth, *supra* note 25, at A23. The Act calls for cuts of tactical weapons which are not covered by other treaties. *Id.*

⁴⁹ Press Release, *supra* note 16. H.R. 2351 is still pending in committee. *Id.*

⁵⁰ See *supra* note 44.

⁵¹ H.R. 2351.

also encourages an arbitrary floor on the number of weapons in the U.S. stockpile – allowing no fewer than 1,700 nuclear weapons – which directly pressures Russia to keep the same number of weapons in their stockpile even though they can no longer afford to maintain and safeguard that many weapons.

In the Armed Services Committee's Report accompanying the Bill, the Democratic members wrote, "[w]hile we strongly support the overall Defense Authorization Bill, we would like to express our views on the wisdom of the nuclear policy that was adopted and some of the amendments on this subjects that were not."

Additionally, several of my colleagues on the House Armed Services Committee who were particularly concerned about the aggressive nuclear positions outlined in the defense bill attempted to amend it. However, because the procedural rules governing the House of Representatives, the Rules Committee must accept all amendments before they can be debated by the full House. Unfortunately, all but one of our amendments were blocked by the Rules Committee on straight party-line votes.

Among our amendments were provisions contained in the Nuclear Threat Reduction Act II. The one I offered that passed will clarify the nuclear posture review's proposed weapons reductions.

An amendment Rep. Spratt offered that did not get out of the Rules Committee would have required the administration to notify Congress 12 months before the intended date of a live nuclear test. This would give Congress time to explore the need for the test and the implications of conducting it. Given that it would take 24-36 months before the test site could even be ready, 12 months is a reasonable timeframe for Congressional notification.

The House and Senate must act on these issues immediately. With reports that a top leader of Al Qaeda has told American official that terrorists are close to constructing a crude nuclear device to be used against the U.S., the provisions advocated in the Nuclear Threat Reduction Act have never been more necessary.

III. DEBT-FOR-NONPROLIERATION SWAPS: RESTRUCTURING RUSSIA'S DEBT IN EXCHANGE FOR NUCLEAR SECURITY

Related legislation I am working on would allow Russia to reduce

its debt in exchange for securing nuclear material.⁵² It is the first nuclear nonproliferation bill with bipartisan support in the House since President Bush took office last year.⁵³

The bill, the Russian Federation Debt Reduction for Nonproliferation Act of 2002, would establish “debt for nonproliferation swaps” and is modeled on past debt reductions for environmental protection efforts.⁵⁴ Through the proposal, the Treasury Department would restructure part of Russia’s debt with the United States.⁵⁵ In exchange, Russia would further its work on joint nonproliferation programs that safeguard Russian nuclear materials, maintain effective export controls, dismantle Russian nuclear facilities, and help unemployed nuclear scientists find work other than with nations and terrorist organizations seeking to build their own nuclear arsenals.⁵⁶

Similar debt reduction plans in which debt was canceled or restructured in return for certain environmental protection efforts have proven very successful, including “debt for environment swaps” that were negotiated with several creditor countries, including the United States, during the first Bush administration.⁵⁷ For example, Poland’s “Polish EcoFund” now has close to \$500 million allocated for environmental protection efforts through 2010.⁵⁸ The Organization for Economic Cooperation and Development has described the EcoFund, in which spending is audited and transparent, as a “model” for environmental financing throughout the former communist bloc.⁵⁹

⁵² Russian Federation Debt Reduction for Nonproliferation Act of 2002, H.R. 3836, 107th Cong. (2002).

⁵³ Press Release, House Moves to Reduce Russian Debt In Exchange for Securing Nuclear Material (March 4, 2002) available at <http://www.house.gov/tauscher/press/03-06-02.htm>. The need to expand the current nonproliferation programs has been intensified because the Bush administration and the intelligence community is concerned that al Qaeda has obtained nuclear material. *Id.*

⁵⁴ H.R. 3836.

⁵⁵ *Id.* (There is established within the U.S. Treasury Department an entity known as the ‘Russian Nonproliferation Investment Facility’ for the purpose of providing for the administration of Russia’s debt reduction.).

⁵⁶ *Id.* Congress found that it is of vital security to the United States to insure that Russia’s weapons experts be placed in positions of civilian employment. *Id.*

⁵⁷ Press Release, Rep. Ellen Tauscher Calls on President Bush to Pursue “Debt for Nonproliferation Swaps” at G-8 Meeting (July 18, 2001) available at <http://www.house.gov/tauscher/press/07-18-01.htm>.

⁵⁸ *Id.*

⁵⁹ *Id.*

During President Bush and Russian President Vladimir Putin's summit last summer, President Putin spoke at length about Russia's mounting debt.⁶⁰ The debt burden he spoke of is quite real and will most certainly undermine the United States' efforts at democratization and market reforms in Russia.

This opportunity for Russia to pay down a portion of its national debt through the ruble-denominated investment of these activities is appealing. The Russian government is very concerned that servicing its external debt may consume up to 40 percent of its budget in the near future.⁶¹ More than \$18 billion of the Russian external debt comes due in 2003, risking default and placing a severe burden on Russian economic reform.⁶²

The United States holds approximately \$3.8 billion in official Russian debt, two-thirds of which dates from the Soviet era.⁶³ In addition, Russia owes Germany approximately \$26 billion, Italy \$6.4 billion, and several other European nations \$35 billion.⁶⁴ Italy is pursuing similar "debt for nonproliferation swaps," and Russia is working to reduce its debt with its commercial and state creditors.⁶⁵

While "debt for nonproliferation swaps" are not a complete solution, they can make a significant difference. If debt holders were to negotiate swaps involving just 10 percent of Russia's state-held debt, the result would be several billion dollars of additional Russian investment in activities that would make the world a safer place.

A. *Legislative Prospects*

I introduced this bill with Congressman John McHugh (R-N.Y.), a member of the House International Relations Committee and my colleague on the Armed Services Committee, in March.⁶⁶

The Senate passed a similar debt-for-nonproliferation provision in the Security Assistance Act, written by Senators Joseph Biden (D-Del.)

⁶⁰ *Id.* The debt will certainly undermine market reform and democratization efforts in Russia. *Id.*

⁶¹ *Id.* Russia risks defaulting on its external debt of \$18 billion, which becomes due in 2003. *Id.*

⁶² Press Release, *supra* note 57.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ H.R. 3836.

and Richard Lugar (R-Ind.).⁶⁷

While the “debt for nonproliferation” swap bill has not yet passed the House of Representatives, its introduction with bipartisan supports increases the likelihood that the provision will survive the conference committee process, during which selected representatives of both parties from the House and Senate meet to reconcile differences in House- and Senate-passed bills before they are enacted into law.

IV. TIME TO ACT: THE NEED FOR CONGRESS TO LEAD THE NONPROLIFERATION EFFORT

Nuclear nonproliferation requires constant vigilance because it often goes unnoticed. When the work is successful, the effects are undetectable. When the programs are ignored and the work stops, the effects will be catastrophic.

It can be difficult to build support in the U.S. House and Senate for programs focused more on Russia than America.⁶⁸ Nuclear nonproliferation has no core constituency in Congress, unlike shipbuilding for representatives of coastal communities or agricultural interests for Midwestern legislators. Couple this problem with an administration that has been reluctant to invest in the programs, and the need for Congressional action becomes even more clear.⁶⁹

At the recent Summit in Moscow between Presidents Bush and Putin, the U.S. and Russia passed over a tremendous opportunity to exponentially improve global security by making real reductions in both of our stockpiles of nuclear weapons.

Instead of confronting the issue and really making progress on it, the brief treaty they signed will allow weapons taken out of the stockpile to be stored rather than dismantled and destroyed. This simply is not good enough.

By essentially putting weapons on blocks in a garage somewhere,

⁶⁷ S.1803, 107th Cong. (2002). This bill was originally introduced on Dec. 11, 2001, and was passed by the Senate on Dec. 20, 2001 with amendment by unanimous consent. *Id.* On Jan. 23, 2002, the bill was referred to a House committee. *Id.* This bill authorizes appropriations under the Arms Export Control Act and the Foreign Assistance Act of 1961 for security assistance for fiscal years 2002 and 2003, and for other purposes. *Id.*

⁶⁸ Nick Williams, *Progress Seen with Russia Scientists*, ASSOCIATED PRESS, Aug. 20, 1999.

⁶⁹ Walter Pincus, *Bush Targets Russia Nuclear Programs for Cuts*, WASH. POST, Mar. 18, 2001; Andrea Widener, *Nuclear Cities Face Uncertainty*, CONTRA COSTA TIMES, Sept. 10, 2001.

we have not truly reduced the number of nuclear weapons throughout the world or truly improved out national security. With all we know about terrorists trying to get nuclear weapons, we need to be sure there are fewer nuclear weapons in fewer, more secure places. Instead, this treaty actually creates a new challenge because, by taking weapons out of the stockpile without destroying them, there will be more nuclear weapons and weapons-usable material in unsecure places than there are today.

As the world's only remaining superpower, it is up to the United States to take the lead and engage Russia in improving the security of both of our aging stockpiles of nuclear weapons. Given the current war against terrorism, Russia's depressed economic situation, and the problems throughout Russia's nuclear weapons complex, the need has never been greater.

APPENDIX A

HR 2351 IH

107th CONGRESS

1st Session

H. R. 2351

To establish the policy of the United States for reducing the number of nuclear warheads in the United States and Russian arsenals, for reducing the number of nuclear weapons of those two nations that are on high alert, and for expanding and accelerating programs to prevent diversion and proliferation of Russian nuclear weapons, fissile materials, and nuclear expertise.

IN THE HOUSE OF REPRESENTATIVES*June 27, 2001*

Mr. SPRATT (for himself and Mrs. TAUSCHER) introduced the following bill; which was referred to the Committee on International Relations, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To establish the policy of the United States for reducing the number of nuclear warheads in the United States and Russian arsenals, for reducing the number of nuclear weapons of those two nations that are on high alert, and for expanding and accelerating programs to prevent diversion and proliferation of Russian nuclear weapons, fissile materials, and nuclear expertise.

Be it enacted by the Senate and House of Representatives of the United

States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE-** This Act may be cited as the ‘Nuclear Threat Reduction Act of 2001’.

(b) **TABLE OF CONTENTS-** The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Purpose.

Sec. 3. Reduction in number of warheads in arsenals of United States and Russia.

Sec. 4. Reduction in alert status of nuclear weapons of United States and Russia.

Sec. 5. Acceleration of programs to prevent diversion of nuclear weapons, materials, and expertise from Russia.

SEC. 2. PURPOSE.

The purpose of this Act is to decrease substantially the likelihood of the use of nuclear weapons.

SEC. 3. REDUCTION IN NUMBER OF WARHEADS IN ARSENALS OF UNITED STATES AND RUSSIA.

(a) *REPEAL OF PROHIBITION AGAINST REDUCTIONS-* Section 1302 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85) is repealed.

(b) **STATEMENT OF POLICY-** It is the policy of the United States to reduce the number of nuclear warheads and nuclear

weapons delivery systems of the United States and Russia, through bilateral agreements between the United States and Russia, to the lowest possible number consistent with the national security of the United States. Any bilateral agreement for purposes of that policy shall provide for transparency, predictability, and verification of the reductions.

- (c) IMPLEMENTATION OF REDUCTIONS- In effecting any reduction in the number of nuclear warheads of the United States, it shall be the policy of the United States—
- (1) that such reductions be intended as permanent reductions in the United States nuclear weapons force, in keeping with the purposes and objectives of the Nuclear Nonproliferation Treaty;
 - (2) that if the President makes unilateral reductions in the United States nuclear weapons force, such reductions should be intended to facilitate bilateral agreement with Russia, and the President should undertake diplomatic efforts to convince Russia to undertake parallel or commensurate reductions in its nuclear weapons force; and
 - (3) that the President should (A) offer enhanced consultation and cooperation by the United States with Russia in making such reductions, and (B) pursue enhanced transparency and other confidence-building measures to ensure predictable and stable strategic relations between the two nations.
- (d) POLICY REGARDING WARHEADS REMOVED FROM WEAPONS SYSTEMS- (1) It is the policy of the United States to ensure through formal agreements with Russia that any nuclear warhead removed from a weapons system by either nation as part of reductions in the number of warheads or systems pursuant to the policies in this Act—
- (A) be kept safe and secure;
 - (B) be accounted for; and
 - (C) eventually be destroyed or eliminated in a manner that is verifiable by the other nation.
- (2) Any such formal agreement shall be entered into either through the agreement referred to in subsection (b) or other agreement between the United States and Russia.

SEC. 4. REDUCTION IN ALERT STATUS OF NUCLEAR WEAPONS OF UNITED STATES AND RUSSIA.

- (a) **STATEMENT OF POLICY-** It is the policy of the United States to pursue with Russia formal arrangements to remove as many nuclear weapons of those two nations as feasible from immediate, launch-ready (or 'high alert') status, consistent with the national security of the United States, concentrating on those weapons earmarked for downloading, dismantlement, or elimination under the START II treaty. Such arrangements should seek to ensure that any change in the alert status of such weapons of either nation be transparent and verifiable.
- (b) **IMPLEMENTATION OF REDUCTION IN ALERT STATUS-** If the President makes unilateral changes to the alert status of weapons in the United States nuclear arsenal, such changes should—
- (1) be consistent with the national security of the United States; and
 - (2) be pursued as part of a broader United States effort to persuade Russia to enter into arrangements as called for in subsection (a).
- (c) **SECURITY AND VERIFIABILITY-** Any formal arrangement that results from subsection (a) should include measures to ensure that—
- (1) weapons, including their warheads, that are removed from high alert status are secure and accounted for throughout the process by which they are removed from that status; and
 - (2) such accountability measures are verifiable by both nations.

SEC. 5. ACCELERATION OF PROGRAMS TO PREVENT DIVERSION OF NUCLEAR WEAPONS, MATERIALS, AND EXPERTISE FROM RUSSIA.

(a) **STATEMENT OF POLICY-** It is the policy of the United States to work cooperatively with Russia to prevent the diversion of nuclear weapons, materials, and expertise from Russia. In furtherance of that objective, the policy of the United States should include the following:

- (1) With respect to the nuclear weapons arsenal of Russia—

(A) ensuring that all the elements of that arsenal, including delivery systems, are identified and accounted for;

(B) identifying with Russia those elements of that arsenal that are most susceptible to proliferation; and

(C) ensuring that the weapons in that arsenal and their components are secured and safeguarded, placing the highest priority on safeguards for those weapons and components that are identified pursuant to subparagraph (B) as being those most susceptible to proliferation.

(2) With respect to Russia's stockpile of nuclear weapons materials (other than materials in Russia's arsenal)—

(A) ensuring that all the elements of that stockpile are identified and accounted for;

(B) identifying with Russia those elements of that stockpile that are most susceptible to proliferation; and

(C) ensuring that the elements of that stockpile are secured and safeguarded, placing the highest priority on safeguards for those elements of that stockpile that are identified pursuant to subparagraph (B) as being those most susceptible to proliferation.

(3) With respect to nuclear weapons expertise in Russia—

(A) identifying and accounting for the extent of that expertise in cities in Russia referred to as 'Nuclear Cities' and elsewhere in Russia;

(B) developing and pursuing programs that make productive use of that expertise inside Russia and help prevent the spread of that expertise outside of Russia; and

(C) developing and pursuing initiatives to reduce the Russian nuclear production capacity to a size appropriate to its post-Cold War mission.

(4) Rendering permanently unusable for weapons purposes all nuclear materials and weapons systems that Russia no longer requires to support its arsenal and forces.

(b) AUTHORIZATION OF APPROPRIATIONS- To carry out activities under this Act, cooperative threat reduction programs of the Department of Defense under section 1501(b) of the National Defense Authorization Act for Fiscal Year 1997 (50 U.S.C. 2362 note), and other cooperative threat reduction, nonproliferation, and related programs, there are authorized to be appropriated for fiscal

year 2002 amounts as follows:

- (1) For the Department of Defense, \$600,000,000.
- (2) For the Department of Energy, \$1,200,000,000.
- (3) For the Department of State, \$200,000,000.

(c) PLAN FOR NONPROLIFERATION PROGRAMS WITH RUSSIA-

(1) IN GENERAL- Not later than April 15, 2002, the President shall submit to Congress a plan—

(A) to secure and neutralize over the succeeding eight years all nuclear weapons and weapons-usable nuclear material in Russia that Russia does not retain in its nuclear arsenal; and

(B) to prevent the outflow from Russia of scientific expertise that could be used for developing nuclear weapons or other weapons of mass destruction, including delivery systems.

(2) CONTENT OF PLAN- The plan required by subsection (a) shall include the following:

(A) Specific goals and measurable objectives for the programs that are designed to carry out the objectives specified in subparagraphs (A) and (B) of paragraph (1).

(B) Criteria for success for those programs and a strategy for eventual termination of United States contributions to those programs and assumption of the ongoing support of those programs by Russia.

(C) A description of the administrative and organizational changes that the President plans to take, or will have taken, in order to achieve the direction and coordination of those programs that is necessary for their effectiveness.

(3) COORDINATION WITH RUSSIA- In developing the plan required by paragraph (1), the President shall coordinate with Russia to ensure that elements of the plan are practicable.

(4) CONSULTATION WITH CONGRESS- In developing the plan required by paragraph (1), the President shall consult with the majority and minority leadership of the appropriate committees of Congress.

(d) REPORT ON DEBT-FOR-SECURITY PROGRAM-

(1) STUDY- The President shall conduct a study of the

feasibility of creating a new source of funds for nuclear nonproliferation programs in Russia through establishment of a program providing for the forgiveness of international debt of Russia in exchange for payments by Russia into an independent fund that, under strict conditions, would support the implementation of agreed-upon nuclear nonproliferation programs.

(2) CONSULTATION- In the conduct of the study under paragraph (1), the President shall consult with appropriate representatives of Russia and other nations whose participation in such a program the President determines to be necessary or desirable.

(3) REPORT ON PRESIDENTIAL DETERMINATIONS- Not later than April 15, 2002, the President shall submit to Congress a report on the study required by paragraph (1). The report shall include the President's determinations, together with supporting facts and reasoning, as to each of the following:

(A) The prospects for the participation of creditor nations in addition to the United States in the program of debt forgiveness.

(B) The extent to which payments by Russia into a fund described in paragraph (1) should be made in Russian currency.

(C) The appropriate ratio between the amount of such payments and the amount of debt forgiven.

(D) The purposes for which amounts in the fund should be permitted to be expended.

(E) The means for assuring that those amounts are expended for those purposes.

(F) The feasibility of establishing such a program.

(3) LEGISLATIVE PROPOSAL- The report under paragraph (3) shall include a legislative proposal for implementing any program that the President recommends based on the determinations under that paragraph.

APPENDIX B

HR 3836 IH

107th CONGRESS

2d Session

H. R. 3836

To establish a Russian Federation debt reduction for nonproliferation program.

IN THE HOUSE OF REPRESENTATIVES*March 4, 2002*

Mrs. TAUSCHER (for herself, Mr. MCHUGH, and Mr. SCHIFF) introduced the following bill; which was referred to the Committee on International Relations.

A BILL

To establish a Russian Federation debt reduction for nonproliferation program.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ‘Russian Federation Debt Reduction for Nonproliferation Act of 2002’.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS- Congress finds the following:

- (1) It is in the vital security interests of the United States to prevent the spread of weapons of mass destruction to additional states or to terrorist organizations, and to ensure that other

nations' obligations to reduce their stockpiles of such arms in accordance with treaties, executive agreements, or political commitments are fulfilled.

(2) In particular, it is in the vital national security interests of the United States to ensure that—

(A) all stocks of nuclear weapons and weapons-usable nuclear material in the Russian Federation are secure and accounted for;

(B) stocks of nuclear weapons and weapons-usable nuclear material that are excess to military needs in the Russian Federation are monitored and reduced;

(C) any chemical or biological weapons, related materials, and facilities in the Russian Federation are destroyed;

(D) the Russian Federation's nuclear weapons complex is reduced to a size appropriate to its post-Cold War missions, and its experts in weapons of mass destruction technologies are shifted to gainful and sustainable civilian employment;

(E) the Russian Federation's export control system blocks any proliferation of weapons of mass destruction, the means of delivering such weapons, and materials, equipment, know-how, or technology that would be used to develop, produce, or deliver such weapons; and

(F) these objectives are accomplished with sufficient monitoring and transparency to provide confidence that they have in fact been accomplished and that the funds provided to accomplish these objectives have been spent efficiently and effectively.

(3) United States programs should be designed to accomplish these vital objectives in the Russian Federation as rapidly as possible, and the President should develop and present to Congress a plan for doing so.

(4) Substantial progress has been made in United States-Russian Federation cooperative programs to achieve these objectives, but much more remains to be done to reduce the urgent risks to United States national security posed by the current state of the Russian Federation's weapons of mass destruction stockpiles and complexes.

(5) The threats posed by inadequate management of weapons of mass destruction stockpiles and complexes in the Russian

Federation remain urgent. Incidents in years immediately preceding 2001, which have been cited by the Russia Task Force of the Secretary of Energy's Advisory Board, include—

(A) a conspiracy at one of the Russian Federation's largest nuclear weapons facilities to steal nearly enough highly enriched uranium for a nuclear bomb;

(B) an attempt by an employee of the Russian Federation's premier nuclear weapons facility to sell nuclear weapons designs to agents of Iraq and Afghanistan; and

(C) the theft of radioactive material from a Russian Federation submarine base.

(6) Addressing these threats to United States and world security will ultimately consume billions of dollars, a burden that will have to be shared by the Russian Federation, the United States, and other governments, if this objective is to be achieved.

(7) The creation of new funding streams could accelerate progress in reducing these threats to United States security and help the government of the Russian Federation to fulfill its responsibility for secure management of its weapons stockpiles and complexes as United States assistance phases out.

(8) The Russian Federation suffers from a significant foreign debt burden, a substantial proportion of which it inherited from the Soviet Union. The Russian Federation is taking full responsibility for this debt, but the burden of debt repayment could threaten Russian Federation economic reform, particularly in 2003 and beyond.

(9) The Russian Federation's need for debt relief has been the subject of discussions between the United States and the Russian Federation at the highest levels and is cited by United States officials as one reason why the Russian Federation has recognized that its future lies with the West.

(10) Past debt-for-environment exchanges, in which a portion of a country's foreign debt is canceled in return for certain environmental commitments or payments by that country, provide a model for a possible debt-for-nonproliferation exchange with the Russian Federation, which could be designed to provide additional funding for nonproliferation and arms reduction initiatives.

(11) Most of the Russian Federation's official bilateral debt is held by United States allies that are advanced industrial

democracies. Since the issues described pose threats to United States allies as well, United States leadership that results in a larger contribution from United States allies to cooperative threat reduction activities will be needed.

(b) **PURPOSES-** The purposes of this Act are—

(1) to recognize the vital interests of the United States, its allies, and the Russian Federation in reducing the threats to international security described in the findings set forth in subsection (a);

(2) to facilitate the accomplishment of the United States objectives described in the findings set forth in subsection (a) by providing for the alleviation of a portion of the Russian Federation's foreign debt, thus allowing the use of additional resources for these purposes; and

(3) to ensure that resources freed from debt in the Russian Federation are targeted to the accomplishment of the United States objectives described in the findings set forth in subsection (a).

SEC. 3. DEFINITIONS.

In this Act:

(1) **AGREEMENT-** The term 'Agreement' means the Russian Nonproliferation Investment Agreement provided for in section 8.

(2) **APPROPRIATE CONGRESSIONAL COMMITTEES-** The term 'appropriate congressional committees' means—

(A) the Committee on International Relations and the Committee on Appropriations of the House of Representatives; and

(B) the Committee on Foreign Relations and the Committee on Appropriations of the Senate.

(3) **COST-** The term 'cost' has the meaning given that term in section 502(5) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5)).

(4) **FACILITY-** The term 'Facility' means the Russian Nonproliferation Investment Facility established in the Department of the Treasury by section 4.

(5) SECRETARY- The term ‘Secretary’ means the Secretary of State.

(6) SOVIET-ERA DEBT- The term ‘Soviet-era debt’ means debt owed as a result of loans or credits provided by the United States (or any agency of the United States) to the Union of Soviet Socialist Republics.

SEC. 4. ESTABLISHMENT OF THE RUSSIAN NONPROLIFERATION INVESTMENT FACILITY.

There is established in the Department of the Treasury an entity to be known as the ‘Russian Nonproliferation Investment Facility’ for the purpose of providing for the administration of debt reduction in accordance with this Act.

SEC. 5. REDUCTION OF THE RUSSIAN FEDERATION’S SOVIET-ERA DEBT OWED TO THE UNITED STATES, GENERALLY.

(a) AUTHORITY TO REDUCE SOVIET-ERA DEBT-

(1) AUTHORITY-

(A) IN GENERAL- Except as provided in subparagraph (B), and subject to section 10, the President may reduce the amount of Soviet-era debt owed by the Russian Federation to the United States (or any agency of the United States) that is outstanding as of February 1, 2002.

(B) EXCEPTION- The authority of subparagraph (A) to reduce Soviet-era debt does not include any debt that is described in section 6(a)(1).

(2) CONGRESSIONAL NOTIFICATION- The President shall notify the appropriate congressional committees of the President’s intention to reduce the amount of the Russian Federation’s Soviet-era debt at least 15 days in advance of any formal determination to do so.

(3) AUTHORIZATION OF APPROPRIATIONS-

(A) IN GENERAL- For the cost of the reduction of any Soviet-era debt pursuant to this section, there are authorized to be appropriated to the President—

(i) \$50,000,000 for fiscal year 2002; and

(ii) \$100,000,000 for fiscal year 2003.

(B) LIMITATION- The authority provided by this section shall be available only to the extent that appropriations for the cost of the modification of any Soviet-era debt pursuant to this section are made in advance.

(4) CERTAIN PROHIBITIONS INAPPLICABLE-

(A) IN GENERAL- A reduction of Soviet-era debt pursuant to this section shall not be considered assistance for the purposes of any provision of law limiting assistance to a country.

(B) ADDITIONAL REQUIREMENT- The authority of this section may be exercised notwithstanding section 620(r) of the Foreign Assistance Act of 1961 or section 321 of the International Development and Food Assistance Act of 1975.

(b) IMPLEMENTATION OF SOVIET-ERA DEBT REDUCTION-

(1) IN GENERAL- Any reduction of Soviet-era debt pursuant to subsection (a) shall be—

(A) implemented pursuant to the terms of a Russian Nonproliferation Investment 1, 2002. Agreement authorized under section 8; and

(B) accomplished at the direction of the Facility by the exchange of a new obligation for obligations of the type referred to in such subsection that are outstanding as of February

(2) EXCHANGE OF OBLIGATIONS-

(A) IN GENERAL- The Facility shall notify the agency primarily responsible for administering part I of the Foreign Assistance Act of 1961 of an agreement entered into under paragraph (1) with the Russian Federation to exchange a new obligation for outstanding obligations.

(B) ADDITIONAL REQUIREMENT- At the direction of the Facility, the old obligations that are the subject of the agreement shall be canceled and a new debt obligation for the Russian Federation shall be established relating to the agreement, and the agency primarily responsible for administering part I of the Foreign Assistance Act of 1961 shall make an adjustment in its accounts to reflect the debt reduction.

(c) **ADDITIONAL TERMS AND CONDITIONS-** The following additional terms and conditions shall apply to the reduction of Soviet-era debt under subsection (a)(1) in the same manner as such terms and conditions apply to the reduction of debt under section 704(a)(1) of the Foreign Assistance Act of 1961:

(1) The provisions relating to repayment of principal under section 705 of the Foreign Assistance Act of 1961.

(2) The provisions relating to interest on new obligations under section 706 of the Foreign Assistance Act of 1961.

SEC. 6. REDUCTION OF SOVIET-ERA DEBT OWED TO THE UNITED STATES AS A RESULT OF CREDITS EXTENDED UNDER TITLE I OF THE AGRICULTURAL TRADE DEVELOPMENT AND ASSISTANCE ACT OF 1954.

(a) AUTHORITY TO REDUCE CERTAIN SOVIET-ERA DEBT-

(1) **AUTHORITY-** Notwithstanding any other provision of law, and subject to section 10, the President may reduce the amount of Soviet-era debt owed to the United States (or any agency of the United States) by the Russian Federation that is outstanding as of February 1, 2002, as a result of any credits extended under title I of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1701 et seq.).

(2) **CONGRESSIONAL NOTIFICATION-** The President shall notify the appropriate congressional committees of the President's intention to reduce the amount of the Russian Federation's Soviet-era debt described in paragraph (1) at least 15 days in advance of any formal determination to do so.

(3) AUTHORIZATION OF APPROPRIATIONS-

(A) **IN GENERAL-** For the cost of the reduction of any Soviet-era debt pursuant to this section, there are authorized to be appropriated to the President—

(i) \$50,000,000 for fiscal year 2002; and

(ii) \$100,000,000 for fiscal year 2003.

(B) **LIMITATION-** The authority provided by this section shall be available only to the extent that appropriations for

the cost of the modification of any Soviet-era debt pursuant to this section are made in advance.

(b) IMPLEMENTATION OF SOVIET-ERA DEBT REDUCTION-

(1) IN GENERAL- Any reduction of Soviet-era debt pursuant to subsection (a) shall be—

(A) implemented pursuant to the terms of a Russian Nonproliferation Investment Agreement authorized under section 8; and

(B) accomplished at the direction of the Facility by the exchange of a new obligation for obligations of the type referred to in such subsection that are outstanding as of February 1, 2002.

(2) EXCHANGE OF OBLIGATIONS-

(A) IN GENERAL- The Facility shall notify the Commodity Credit Corporation of an agreement entered into under paragraph (1) with an eligible country to exchange a new obligation for outstanding obligations.

(B) ADDITIONAL REQUIREMENT- At the direction of the Facility, the old obligations that are the subject of the agreement shall be canceled and a new debt obligation shall be established for the Russian Federation relating to the agreement, and the Commodity Credit Corporation shall make an adjustment in its accounts to reflect the debt reduction.

(c) ADDITIONAL TERMS AND CONDITIONS- The following additional terms and conditions shall apply to the reduction of Soviet-era debt under subsection (a)(1) in the same manner as such terms and conditions apply to the reduction of debt under section 604(a)(1) of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1738c(a)(1)):

(1) The provisions relating to repayment of principal under section 605 of such Act.

(2) The provisions relating to interest on new obligations under section 606 of such Act.

SEC. 7. AUTHORITY TO ENGAGE IN DEBT-FOR-NONPROLIFERATION EXCHANGES AND DEBT BUYBACKS.

(a) LOANS AND CREDITS ELIGIBLE FOR SALE, REDUCTION, OR CANCELLATION-

(1) DEBT-FOR-NONPROLIFERATION EXCHANGES-

(A) IN GENERAL- Notwithstanding any other provision of law, and subject to section 10, the President may, in accordance with this section, sell to any purchaser eligible under subparagraph (B), any loan or credit described in section 5(a)(1), or any credit described in section 6(a)(1), or on receipt of payment from an eligible purchaser, reduce or cancel any such loan or credit or portion thereof, only for the purpose of facilitating a debt-for-nonproliferation exchange to support activities that further United States objectives described in the findings set forth in section 2(a).

(B) ELIGIBLE PURCHASER- A loan or credit may be sold, reduced, or canceled under subparagraph (A) with respect to a purchaser who presents plans satisfactory to the President for using the loan or credit for the purpose of engaging in debt-for-nonproliferation exchange to support activities that further United States objectives described in the findings set forth in section 2(a).

(C) CONSULTATION REQUIREMENT- Before the sale under subparagraph (A) to any purchaser eligible under subparagraph (B), or any reduction or cancellation under subparagraph (A), of any loan or credit made to the Russian Federation, the President shall consult with that country concerning the amount of loans or credits to be sold, reduced, or canceled and their uses for debt-for-nonproliferation exchanges to support activities that further United States objectives described in the findings set forth in section 2(a).

(D) AUTHORIZATION OF APPROPRIATIONS- For the cost of the reduction of any debt pursuant to subparagraph (A), amounts authorized to be appropriated under sections 5(a)(3) and 6(a)(3) shall be made available for such reduction of debt pursuant to subparagraph (A).

(2) DEBT BUYBACKS- Notwithstanding any other provision of law, the President may, in accordance with this section, sell

to the Russian Federation any loan or credit described in section 5(a)(1) or any credit described in section 6(a)(1), or on receipt of payment from the Russian Federation, reduce or cancel such loan or credit or portion thereof, if the purpose of doing so is to facilitate a debt buyback by the Russian Federation of its own qualified debt and the Russian Federation uses a substantial additional amount of its local currency to support activities that further United States objectives described in the findings set forth in section 2(a).

(3) LIMITATION- The authority provided by paragraphs (1) and (2) shall be available only to the extent that appropriations for the cost of the modification of any debt pursuant to such paragraphs are made in advance.

(4) TERMS AND CONDITIONS- Notwithstanding any other provision of law, the President shall, in accordance with this section, establish the terms and conditions under which loans and credits may be sold, reduced, or canceled pursuant to this section.

(5) ADMINISTRATION-

(A) IN GENERAL- The Facility shall notify the Administrator of the agency primarily responsible for administering part I of the Foreign Assistance Act of 1961 or the Commodity Credit Corporation, as the case may be, of purchasers that the President has determined to be eligible under paragraph (1)(B), and shall direct such agency or Corporation, as the case may be, to carry out the sale, reduction, or cancellation of a loan pursuant to such paragraph.

(B) ADDITIONAL REQUIREMENT- Such agency or Corporation, as the case may be, shall make an adjustment in its accounts to reflect the sale, reduction, or cancellation.

(b) DEPOSIT OF PROCEEDS- The proceeds from a sale, reduction, or cancellation of a loan sold, reduced, or canceled pursuant to this section shall be deposited in the United States Government account or accounts established for the repayment of such loan.

SEC. 8. RUSSIAN NONPROLIFERATION INVESTMENT AGREEMENT.

(a) AUTHORITY- Subject to section 10, the Secretary is authorized,

in consultation with other appropriate officials of the Federal Government, to enter into an agreement with the Russian Federation concerning the use of the funds saved by that country as a result of any debt relief provided pursuant to this Act. An agreement entered into under this section may be referred to as the 'Russian Nonproliferation Investment Agreement'.

(b) **CONTENT OF AGREEMENT-** The Russian Nonproliferation Investment Agreement shall ensure that—

- (1) a significant proportion of the funds saved by the Russian Federation as a result of any debt relief provided pursuant to this Act is devoted to nonproliferation programs and projects;
- (2) funding of each such program or project is approved by the United States Government, either directly or through its representation on any governing board that may be directed or established to manage these funds;
- (3) administration and oversight of nonproliferation programs and projects incorporate best practices from established threat reduction and nonproliferation assistance programs;
- (4) each program or project funded pursuant to the Agreement is subject to audits conducted by or for the United States Government;
- (5) unobligated funds for investments pursuant to the Agreement are segregated from other Russian Federation funds and invested in financial instruments guaranteed or insured by the United States Government;
- (6) the funds that are devoted to programs and projects pursuant to the Agreement are not subject to any taxation by the Russian Federation;
- (7) all matters relating to the intellectual property rights and legal liabilities of United States firms in a given project are agreed upon before the expenditure of funds is authorized for that project; and
- (8) not less than 75 percent of the funds made available for each nonproliferation program or project under the Agreement is spent in the Russian Federation.

(c) **USE OF EXISTING MECHANISMS-** It is the sense of Congress that, to the extent practicable, the boards and administrative mechanisms of existing threat reduction and nonproliferation programs should be used in the administration and oversight of programs and projects under the Agreement.

SEC. 9. STRUCTURE OF DEBT-FOR-NONPROLIFERATION ARRANGEMENTS.

It is the sense of Congress that any debt-for-nonproliferation arrangements with the Russian Federation should provide for gradual debt relief over a period of years, with debt relief to be suspended if more than two years' worth of funds remain unobligated for approved nonproliferation programs or projects.

SEC. 10. NONPROLIFERATION REQUIREMENT.

(a) **PROLIFERATION TO STATE SPONSORS OF TERRORISM-** The authorities granted under sections 5, 6, 7, and 8 may not be exercised, and funds may not be expended, unless and until—

(1) the Russian Federation makes material progress in stemming the flow of sensitive goods, technologies, material, and know-how related to the design, development, and production of weapons of mass destruction and the means to deliver them to countries that have been determined by the Secretary, for the purposes of section 40 of the Arms Export Control Act, section 620A of the Foreign Assistance Act of 1961, or section 6(j) of the Export Administration Act of 1979, to have repeatedly provided support for acts of international terrorism; and

(2) the President certifies to the appropriate congressional committees that the condition required in paragraph (1) has been met.

(b) **ANNUAL DETERMINATION-** If, in any annual report to Congress submitted pursuant to section 13, the President cannot certify that the Russian Federation continues to meet the condition required in subsection (a)(1), then, subject to the provisions of subsection (c), the authorities granted under sections 5, 6, 7, and 8 may not be exercised, and funds may not be expended, unless and until such certification is made to the appropriate congressional committees.

(c) **PRESIDENTIAL WAIVER-** The President may waive the requirements of subsection (b) for a fiscal year if the President determines that imposition of those requirements in that fiscal year would be counter to the national interest of the United States and so reports to the appropriate congressional committees.

SEC. 11. DISCUSSION OF RUSSIAN FEDERATION DEBT REDUCTION FOR NONPROLIFERATION WITH OTHER CREDITOR STATES.

The President and such other appropriate officials as the President may designate shall institute discussions in the Paris Club of creditor states with the objectives of—

- (1) reaching agreement that each member of the Paris Club is authorized to negotiate debt exchanges with the Russian Federation covering a portion of its bilateral debt, to finance the accomplishment of nonproliferation and arms reduction activities;
- (2) convincing other member states of the Paris Club, especially the largest holders of Soviet-era Russian debt, to dedicate significant proportions of their bilateral debt with the Russian Federation to these purposes; and
- (3) reaching agreement, as appropriate, to establish a unified debt exchange fund to manage and provide financial transparency for the resources provided through the debt exchanges.

SEC. 12. CONSULTATIONS WITH CONGRESS.

The President shall consult with the appropriate congressional committees on a periodic basis to review the operations of the Facility and the Russian Federation's eligibility for benefits from the Facility.

SEC. 13. ANNUAL REPORT TO CONGRESS.

Not later than December 31, 2002, and not later than December 31 of each year thereafter, the President shall prepare and transmit to Congress a report concerning the operation of the Facility during the fiscal year preceding the fiscal year in which the report is transmitted. The report on a fiscal year shall include—

- (1) a description of the activities undertaken by the Facility during the fiscal year;
- (2) a description of any agreement entered into under this Act;
- (3) a description of any grants that have been provided pursuant

to the agreement; and

(4) a summary of the results of audits performed in the fiscal year pursuant to the agreement.