

Multilateral Treaties Are Fundamental Tools for Protecting Global Security; United States Faces Choice of Bolstering These Regimes or Allowing Their Erosion

Important global security treaties, including treaties on nonproliferation and disarmament of weapons of mass destruction, have been compromised or undermined by U.S. policies and actions in recent years.

Multilateral treaties cannot in themselves ensure security, but they offer a framework to meet today's extremely serious challenges ranging from risks of accidental nuclear war and terrorist use of a nuclear device to global warming and massacres of civilians. Multilateral treaties and the regimes they establish contribute to national and global security by articulating norms, creating monitoring and enforcement mechanisms, and providing benchmarks for progress. Opponents of the international treaty system caution against binding agreements where other states may not obey, but legal systems must not be abandoned because some actors do not comply. Instead, violations must be addressed with enforcement mechanisms including verification procedures that work to detect and deter violations and a range of sanctions.

As the world faces increased risk of terrorist attacks using weapons of mass destruction, treaties are even more important in terms of monitoring materials and preventing proliferation. In addition to the Chemical Weapons Convention, the Nuclear Nonproliferation Treaty, and the Biological Weapons Convention (which needs a strengthened verification regime to be successful in controlling the spread and use of bioweapons), treaties could be used to address accounting and safeguarding of nuclear weapons usable materials, and to control radioactive materials that could be used to make dirty bombs. International cooperation will also be needed to avoid serious climatic problems and their potentially devastating security implications.

U.S. refusal to abide by common rules risks the safety of the U.S. public along with the rest of the world. The United States, a leading advocate of the rule of law, should not set itself above the law on the international plane. It should work toward upholding international legal agreements, and when necessary work within them for modification instead of abandoning them. There is value in the system where each country gives up something to get something in return. For the treaties described below, the added value is international security. U.S. policies should be reconsidered for each of these treaties individually. The benefit to national and global security derives as well from the overall framework of interlocking and mutually reinforcing treaties, and U.S. policy toward that framework should be reassessed, including in Congressional hearings.

This briefing paper is based upon a report issued by the Institute for Energy and Environmental Research and the Lawyers' Committee on Nuclear Policy, Nicole Deller, Arjun Makhijani, and John Burroughs, eds., *Rule of Power or Rule of Law? An Assessment of U.S. Policies and Actions Regarding Security-Related Treaties*, published in 2003 by Apex Press (order at www.lcnp.org/pubs/rpbflief.htm).

Biological Weapons Convention (BWC) – In 2001, the United States rejected a draft protocol to the BWC negotiated by BWC states parties to create transparency and verification mechanisms. Instead, the United States seeks only voluntary measures that will not provide sufficient information on facilities and agents that could be diverted for use in bioweapons. Meanwhile, the United States has conducted biodefense programs that may violate the BWC prohibition against developing biological weapons, though absent transparency mechanisms there is no way for third parties to determine that. Although these activities were undertaken in the name of defense, the United States would not rely on another country's assurances that its bioweapons were created for defensive purposes.

Chemical Weapons Convention (CWC) – The United States limited its compliance with the declaration and inspection regime of the CWC. It narrowed the facilities open to inspection, prohibited removal of samples, and conferred on the president the right to refuse inspections for national security reasons. The CWC does not permit these limitations, and already contains thorough safeguards for the protection of confidential information. The limitations may prevent accurate results, and other states are applying them to inspections of their facilities. In

2002, the United States led changes in management of the body charged with implementing the CWC, expressing a desire to strengthen CWC operations.

Nuclear Nonproliferation Treaty (NPT) – Article VI of the NPT obligates the United States and other declared nuclear weapons states to achieve complete nuclear disarmament through good-faith negotiations. However, the U.S. Nuclear Posture Review (NPR) plans for the maintenance of large and modernized nuclear forces for the indefinite future and for expansion of options for use of nuclear weapons against non-nuclear armed countries. Consistent with the NPR, the U.S.-Russian treaty signed in May 2002 permits deployment of up to 2200 strategic (long-range) warheads in 2012. Other U.S. warheads, likely over 2000, will be retained in a “responsive force” capable of redeployment in weeks or months. Counting non-strategic and other warheads, the total U.S. arsenal likely will be over 6000. The U.S. policy reflected in the NPR and the 2002 treaty, and the similar Russian policy, put both countries in violation of the NPT disarmament obligation.

Comprehensive Test Ban Treaty (CTBT) – The CTBT bans all nuclear explosions, for any purpose, warlike or peaceful. In order to enter into force, the CTBT must be signed and ratified by 44 listed countries that have some form of nuclear technological capability, including the United States. The United States signed the CTBT in 1996, but in 1999 the Senate voted to reject ratification, and the Bush administration does not support ratification. As a signatory, the United States is obliged under treaty law to refrain from acts that would defeat the CTBT’s object and purpose. However, the United States, along with France, which has ratified the CTBT, is preparing to violate the prohibition of nuclear explosions by building large laser fusion facilities with the intent of carrying out laboratory thermonuclear explosions of up to ten pounds of TNT equivalent.

Mine Ban Treaty – The Mine Ban Treaty prohibiting antipersonnel landmines has been ratified by 142 countries, not including the United States. President Clinton committed the United States to cease using antipersonnel mines and join the treaty by 2006 if alternatives are identified and fielded. However, in February 2004 the Bush administration reversed this policy, announcing that the United States will not join the treaty and that U.S. use of self-destructing antipersonnel mines is permissible without any geographic restriction.

UN Framework Convention on Climate Control (UNFCCC) and the Kyoto Protocol – Climate change could have vast implications for global security by disrupting food production and causing large increases in refugees. As a party to the 1992 UNFCCC, the United States is obligated to take “precautionary measures to anticipate, prevent or minimize the causes of climate change.” Out of this framework arose the 1997 Kyoto Protocol, which set greenhouse gas emissions targets for developed countries. The United States signed the protocol (a treaty), but refuses to ratify it. Other countries bound by the protocol have agreed to move forward with a set of limitations on emissions. For the United States, the obligations under the UNFCCC to take action to reduce climate change still exist and are not being met. While the Bush administration now acknowledges that climate change is largely due to greenhouse gases, it recently promoted an approach of adapting to rather than curbing further damage. The administration previously announced plans to reduce greenhouse gas “intensity” of the U.S. economy. This goal would reduce emissions per unit of economic output, but the target for the reduction in intensity is so low that total emissions would still continue to grow, in violation of U.S. commitments under the UNFCCC.

Rome Statute of the International Criminal Court (ICC) – The ICC is the world’s first permanent criminal court to try individuals for genocide, crimes against humanity, war crimes, and aggression (when that crime is defined) committed in the territories of states parties or by the nationals of states parties, or when directed by the UN Security Council. It will bolster global security by deterring the commission of large-scale atrocities, providing a resource for prosecution of mass terrorism, and reinforcing the taboo against use of weapons of mass destruction. The ICC does not preempt national criminal systems; rather it initiates action only when states are unwilling or unable to prosecute alleged perpetrators of crimes. In May 2002 the Bush administration acted to undo the U.S. signature of the Rome Statute by notifying the UN that the United States does not intend to ratify the Statute. The Bush administration is also seeking to shield U.S. personnel from any possible ICC prosecution through Security Council resolutions and bilateral agreements, and Congress adopted legislation that absent presidential waiver denies military assistance to non-allied countries that cooperate with the ICC.

Recommendations

- Congress should hold hearings on the erosion of the U.S. commitment to global security treaties

The United States should

- commit to the earliest possible completion of a BWC protocol establishing a regime including declarations, on-site visits and challenge inspections, and terminate all programs to construct bioweapons
- strengthen the CWC by allowing full inspections of the subject chemicals and facilities according to the terms of the CWC
- comply with the NPT by working with Russia to drastically reduce strategic nuclear arms and destroy or dismantle reduced delivery systems and warheads; rejecting expansion of nuclear weapons use options set forth in the Nuclear Posture Review; and with other nuclear-armed states making the total elimination of nuclear arsenals the centerpiece of national planning and policy with respect to nuclear weapons
- stop all preparations for carrying out laboratory thermonuclear explosions, unconditionally ratify the CTBT, and maintain the nuclear test moratorium now in effect until such time as the CTBT enters into force
- join the Mine Ban Treaty, or at least set a deadline for doing so; make the ban on export of antipersonnel mines permanent (it now expires in 2008); and ensure that alternatives comply with the treaty
- comply with the UNFCCC by creating policies and targets for reducing greenhouse gas intensity at a rate faster than the anticipated rate of economic growth, and by reengaging with the world community to find ways to drastically reduce greenhouse gas emissions globally over the next three to four decades
- ratify the Rome Statute and fully participate in the ICC and, pending ratification, repeal legislation prohibiting future support for the ICC and conditioning military assistance on a state's non-participation in the ICC

Ratification of Selected Security Treaties by the Permanent Members of the UN Security Council

Country	CWC	BWC	NPT	CTBT	Mine Ban	FCCC	Kyoto	ICC
China	4/25/97 (r)	11/15/84 (a)	3/09/92 (a)	SI 9/24/96*		1/5/93 (r)	SI 5/29/98	
France	3/2/95 (r)	09/27/84 (a)	8/03/92 (a)	4/6/98 (r)*	7/23/98 (r)	3/25/94 (r)	5/31/02 (ap)	6/9/00 (r)
Russia	11/5/97 (r)	3/26/75 (r)	3/05/70 (r)	6/30/00 (r)*		12/28/94(r)	SI 3/11/99	SI 9/13/00
UK	5/13/96 (r)	3/26/75 (r)	11/27/68 (r)	4/6/98 (r)*	7/31/98 (r)	12/8/93 (r)	5/31/02 (r)	10/4/01(r)
USA	4/25/97 (r)	3/26/75 (r)	3/05/70 (r)	SI 9/24/96*		10/15/92(r)	SI 11/12/98	SI 12/31/00

SI - date of signature if not ratified; (r) - ratification; (a) - accession; (ap) - approval; * - ratification required for entry into force

Institute for Energy and Environmental Research
6935 Laurel Avenue
Takoma Park, MD 20912
301 270 5500; www.ieer.org

Lawyers' Committee on Nuclear Policy
211 E. 43d St., Suite 1204
New York, NY 10017
212 818 1861; www.lcnp.org

June 2004