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A New Legal Regime for Bilateral Assistance Programs: International Agreements Governing the "Nunn-Lugar" Demilitarization Program in the Former Soviet Union

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On December 12, 1991, President George Bush signed into law an unprecedented piece of legislation popularly referred to as the "Nunn-Lugar Act" in honor of the Act's principal sponsors, Senators Sam Nunn and Richard Lugar. The Act, which Congress has enlarged with subsequent legislation and funded with authorization and appropriations acts providing up to $1.6 billion over the course of four years, created a complicated legal and fiscal frame-
work to use United States Department of Defense resources to provide assistance to states of the former Soviet Union in order to facilitate the demilitarization of the former Soviet Union's military facilities, technologies and capabilities and to help prevent the proliferation of weapons, weapons technology and weapons expertise from the former Soviet Union.\(^4\) In order for the U.S. Department of Defense to provide the assistance envisioned by the Nunn-Lugar legislation, a number of complex bilateral agreements have been negotiated and concluded with the states of the former Soviet Union. These "Nunn-Lugar" or "Cooperative Threat Reduction"\(^5\) (CTR) agreements have established a unique legal regime for delivering, using and auditing this assistance.\(^6\) Unlike other international agreements under which the United States may simply provide cash, loans or some other form of aid to a foreign country, these CTR agreements are designed and required to directly sup-

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4. The Soviet Nuclear Threat Reduction Act of 1991 § 212, 22 U.S.C. § 2551 note, authorized the establishment of programs to: "(1) destroy nuclear weapons, chemical weapons, and other weapons, (2) transport, store, disable, and safeguard weapons in connection with their destruction, and (3) establish verifiable safeguards against the proliferation of such weapons." The Former Soviet Union Demilitarization Act of 1992 § 1412(b), 22 U.S.C. § 5902(b), authorized additional areas of cooperation, including: preventing the diversion of the former Soviet Union's weapons-related scientific expertise to terrorist groups or third countries; facilitating the demilitarization of defense industries of the former Soviet Union and the conversion of military technologies and capabilities into civilian activities; establishing science and technology centers in the independent states of the former Soviet Union to engage weapons scientists, engineers and other experts previously involved with nuclear, chemical and other weapons in productive, non-military undertakings; and, expanding military-to-military contacts between the United States and the independent states of the former Soviet Union.

5. Since Congress enacted the Cooperative Threat Reduction Act of 1993, 22 U.S.C. §§ 5951-5958, the U.S. Department of Defense has frequently referred to this program as the "Cooperative Threat Reduction" program, rather than the "Nunn-Lugar" program, although the terms are often used interchangeably. See Letter from William J. Perry, Secretary of Defense, to Thomas J. Foley, Speaker of the House of Representatives 1 (Feb. 16, 1994)(on file with the Virginia Journal of International Law); Letter from William J. Perry, Secretary of Defense, to Newton Gingrich, Speaker of the House of Representatives 1 (June 24, 1995)(on file with the Virginia Journal of International Law).

6. A list of these agreements appears in the Appendix to this Article.
port specific U.S. national security objectives while complying with a complicated set of statutory restrictions and requirements.\(^7\)

Although each of the newly independent states of the former Soviet Union could ultimately become eligible to receive CTR assistance,\(^8\) the Department of Defense has only provided such assistance to those countries where the former Soviet Union had based its nuclear weapons: Belarus, Kazakhstan, the Russian Federation and Ukraine. This allocation of assistance is based on the statutory requirement that the President certify that each recipient state is committed to six specific courses of action before it is actually eligible to receive CTR assistance.\(^9\) To date, the United States government has chosen to certify only the four republics on whose territory nuclear weapons were located.\(^10\) These certification requirements appear in the Soviet Nuclear Threat Reduction Act of 1991 § 211(b), 22 U.S.C. § 2551 note, and the Former Soviet Union Demilitarization Act of 1992 § 1412(d), 22 U.S.C. § 5902(d).

7. Section 1203 of the Cooperative Threat Reduction Act of 1993 provides that CTR programs may be carried out "only to the extent that the President [as delegated to the Secretary of Defense] determines that the program will directly contribute to the national security interests of the United States." Cooperative Threat Reduction Act of 1993 § 1203, 22 U.S.C. § 5952.


9. To be eligible to receive CTR assistance, the Cooperative Threat Reduction Act requires certification that each proposed recipient country is committed to the following six courses of action: (1) Making a substantial investment of its resources for dismantling or destroying weapons of mass destruction, if such recipient has an obligation under a treaty or other agreement to destroy or dismantle any such weapons; (2) Foregoing any military modernization program that exceeds legitimate defense requirements and foregoing the replacement of destroyed weapons of mass destruction; (3) Foregoing any use in new nuclear weapons of fissionable or other components of destroyed nuclear weapons; (4) Facilitating U.S. verification of any weapons destruction carried out under the Cooperative Threat Reduction Act of 1993 (Title XII of Pub. L. 103-160), the Former Soviet Union Demilitarization Act of 1992 (Title XIV of Pub. L. 102-484), and the Soviet Nuclear Threat Reduction Act of 1991 (Title II of Pub. L. 102-228); (5) Complying with all relevant arms control agreements; and (6) Observing internationally recognized human rights, including protection of minorities. Cooperative Threat Reduction Act of 1993 § 1203(d), 22 U.S.C. § 5952(d).

10. The Secretary of State transmitted the most recent certification of these four republics to Congress on January 12, 1995. Certification Pursuant to the Cooperative Threat Reduction Act of 1993 (Jan. 12, 1995) (on file with the Virginia Journal of International Law). Although to date the United States government has provided assistance under the Nunn-Lugar legislation primarily to address nuclear weapons concerns, such assistance is not limited to nuclear weapons and is available for destruction programs involving conventional, chemical and biological weapons as well. Soviet Nuclear
requirements were the subject of intense debate in connection with the passage of the original 1991 Nunn-Lugar legislation, and the U.S. Congress recently approved additional requirements.11

I. THE DOMESTIC AND INTERNATIONAL POLITICAL CONTEXT

Arguing in support of the original 1991 Nunn-Lugar legislation, Senator Nunn used a pragmatic analogy to describe the choices facing the Senate: "As the auto mechanic on television used to tell us, holding a new oil filter in one hand and a huge bill for engine overhaul in the other, we can pay now for modest preventative measures, or we can pay later for major, expensive defense and deterrence programs."12 Emphasizing that the aim of the proposed demilitarization program was to achieve specific national security objectives and not merely to provide assistance to the former Soviet Union, Senator Nunn stated that "[i]t is far from a blank check. To me it is not foreign aid, it is self-defense."13 In a speech to the Chicago Council on Foreign Relations, Secretary of Defense William Perry echoed these remarks, stressing that "Nunn-Lugar is reducing the nuclear threat missile by missile, factory by factory, and person by person. . . . This was what we call 'defense by other means.'"14


11. See, e.g., H.R. 1530, 104th Cong., 1st Sess. § 1208(a) (1995) (providing that of the funds appropriated pursuant to applicable authorizations for the CTR program, $60 million may not be obligated or expended until the President submits to Congress a certification that Russia is, among other things, in compliance with its obligations under the biological weapons convention).


13. Id. Senator Lugar expressed similar sentiments, arguing that the proposed legislation was "narrow in focus. It contains appropriate conditions that must be met . . . ." 137 Cong. Rec. S18,006 (daily ed. Nov. 25, 1991) (statement of Sen. Lugar). He further stated that '[t]his is not foreign aid; our amendment is part of a national security package." Id. Many of the senators and congressmen supporting the original 1991 Nunn-Lugar legislation were emphatic on this point, stressing the limited and specific national security objectives to be achieved: "Our people understand; they know this is not a foreign aid package. This is an American security package targeted toward the security of our own people." 137 Cong. Rec. S18,006 (daily ed. Nov. 25, 1991) (statement of Sen. Levin).

In addition to specific dismantlement and demilitarization objectives, supporters of the original legislation stressed several specific nonproliferation objectives, particularly those related to preventing the proliferation of weapons expertise. Senator Nunn said that the program this proposal contemplated "can also, most importantly, engage Soviet weapons experts and underscore the importance of preventing the export of weapons and weapons expertise to the Saddam Husseins and the Mu'ammar Gadhafis of the Third World." Accordingly, in describing the Nunn-Lugar legislation's implementation, Defense Secretary Perry has emphasized these objectives and noted that "by helping to ensure the safe dismantlement of the old Soviet arsenal, and the conversion of nuclear weapons industries to peaceful enterprises, [CTR assistance] helps prevent the spread of nuclear weapons and technical expertise to states eager to advance their own nuclear weapons."

Due to its unique purposes and specific restrictions, the CTR program has been described in hearings before the U.S. Congress as a wise investment for the United States: "Dollar for dollar, there is no better way to spend national security resources than to help eliminate a former enemy's nuclear weapons and convert its industry to peaceful enterprises." In testimony before the Senate Foreign Relations Committee, Secretary of State Warren Christopher described the CTR program as

one of the most prudent and wise programs that I think the Congress has ever enacted. It has done a great deal to lift the nuclear threat from the United States and the world. To just speak in broad terms, the Nunn-Lugar funds were essential to persuading Kazakhstan to give up its Nuclear Program and to agree to commit to the Non-Proliferation Treaty. Nunn-Lugar funds were essential to

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17. Id. Arguments by supporters in Congress on the "bargain" the Nunn-Lugar legislation would achieve usually focused on the distinction between the program's specific national security objectives and foreign aid programs: "Mr. President, this amendment is not one which ignores our domestic needs. It is not foreign aid. It is a true grand bargain and is perhaps as effective a way to spend a share of our budget for national defense as any which could possibly be adopted." 137 Cong. Rec. S18,007 (daily ed. Nov. 25, 1991) (statement of Sen. Gorton).
persuade Ukraine to give up its nuclear program and commit to the Non-Proliferation Treaty.

Both of those countries were able to ratify the START I treaty, because they were prepared to give up their Nuclear Program. The Nunn-Lugar funds have been absolutely essential in enabling the Russians to dismantle nuclear missiles . . . .

As I say, it is one of the most prudent, wise, far sighted programs that I think has been enacted.\textsuperscript{18}

Summarizing the prevailing theme associated with the Nunn-Lugar legislation and emphasizing the unique role and purpose of CTR funds, one senator reminded Secretary Christopher that “[w]hat Nunn-Lugar funds are all about is not to give away money needlessly to Russia, but to give money to projects that enhance the national security interests of the United States directly by reducing the threat in that area.”\textsuperscript{19} It is this often cited imperative of “not giving money away,” the adamant statements of the sponsors of the Nunn-Lugar legislation that it was not intended to be “foreign aid” and the program’s clear and essential connection to specific national security objectives and specific demilitarization goals that have required the negotiation of the unique bilateral assistance regime which now governs CTR assistance activities.

\textbf{II. THE “UMBRELLA” AGREEMENT FRAMEWORK}

The Department of Defense provides CTR assistance to each of the four eligible republics of the former Soviet Union pursuant to “umbrella” agreements that establish an overall legal framework for CTR assistance activities.\textsuperscript{20} Each of these four umbrella agree-


\textsuperscript{19} Id. at 433 (statement of Sen. Exon).

ments provides a system of rights, exemptions and protections for U.S. assistance personnel and CTR activities and designates "Executive Agents" to implement CTR assistance programs for each government. For the United States, the designated executive agent is the Department of Defense. This designation corresponds with the Defense Department's responsibilities for the appropriations involved and with the intent of the original Nunn-Lugar legislation, which provided that the Department of Defense was to serve as the executive agent for any programs established under the Act.

Consistent with the Defense Department's accountability for the funds and objectives involved, the President has delegated his statutory responsibilities and duties for the conduct of the CTR program to the Secretary of Defense. These responsibilities include complying with specific requirements related to the conduct of the program, notifying Congress of proposed obligations and providing various reports on the status of the CTR program. The President

21. U.S.-Kazakhstan CTR Umbrella Agreement, supra note 20, art. II; U.S.-Ukraine CTR Umbrella Agreement, supra note 20, art. II; U.S.-Belarus CTR Umbrella Agreement, supra note 20, art. II; U.S.-Russia CTR Umbrella Agreement, supra note 20, art. III.

The Executive Agent for the Russian Federation is the Ministry of the Russian Federation for Atomic Energy; for agreements involving activities other than those directly related to nuclear weapons, the Russian Federation has designated other entities as the Executive Agent, such as a special state committee for an implementing agreement addressing chemical weapons destruction. See Agreement Between the Department of Defense of the United States of America and the President's Committee on Conventional Problems of Chemical and Biological Weapons of the Russian Federation Concerning the Safe, Secure and Ecologically Sound Destruction of Chemical Weapons, July 30, 1992, art. 2 (on file with the Virginia Journal of International Law). The Executive Agents for Belarus, Kazakhstan and Ukraine are each country's respective ministry of defense, unless otherwise officially designated for a particular implementing agreement.


has delegated the task of certifying each state's eligibility to receive the assistance to the Secretary of State. 24

Each of the four umbrella agreements authorizes the executive agent to conclude "implementing agreements," which are subject to and governed by the terms of the umbrella agreement and which provide more detailed terms for specific assistance projects. By October 1995, the Defense Department had concluded thirty-four such implementing agreements: twelve with ministries of the Russian Federation; eight with ministries of the Republic of Belarus; seven with ministries of the Republic of Kazakhstan; and seven with ministries of Ukraine. These project-specific implementing agreements address a wide variety of cooperative demilitarization activities, including agreements on eliminating of strategic offensive arms, 25 controlling and accounting for nuclear materials, 26 defense conversion, 27 export control, 28 emergency assistance


related to removing nuclear weapons, 29 establishing special communications systems for disarmament activities, 30 nuclear weapons transportation security 31 and constructing a facility for storing fissile materials derived from the destruction of nuclear weapons. 32 Although these implementing agreements address a number of different subjects, they contain certain common safeguards, rights and restrictions which, together with provisions in the umbrella agreements, constitute a unique legal regime for the delivery, use and accounting of bilateral assistance. This Article examines the essential provisions that make up this legal regime in the following general categories: fiscal provisions; performance and auditing provisions; status of personnel/activities provisions; and liability provisions.

A. Fiscal Provisions and Relations with the U.S. Congress

Few U.S. government-sponsored international assistance programs have involved as many complex statutory and fiscal restric-

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tions as those which apply to CTR assistance under the Nunn-Lugar legislation. In the program's first two years, Congress did not actually appropriate any new funds to the Department of Defense for CTR assistance, choosing instead to authorize a transfer of up to $400 million annually from existing Defense accounts, subject to case-by-case determinations by the Office of Management and Budget. Congress made these transfers and appropriations subject to numerous spending ceilings and floors, and required the Defense Department to notify Congress fifteen days prior to the transfer or obligation of such funds. Funds transferred to Defense accounts for CTR activities also became subject to the same restrictions that apply to other Defense appropriations in those accounts, including time limits on the availability of those funds.

These numerous restrictions have made it important for the Department of Defense to notify Congress of any proposed agreements that would commit CTR funds and have given rise to unique fiscal provisions in CTR implementing agreements. As the Department of Defense cannot transfer or obligate funds in excess of specific amounts notified to Congress, each CTR imple-


37. By October 1995, the Department of Defense had submitted 29 such notifications to Congress.
menting agreement contains a provision limiting the amount of monetary assistance to the amount previously notified to Congress for each project. A typical CTR implementing agreement thus provides: "The total cost to [the] Department of Defense of the United States of America for all assistance provided to Ukraine pursuant to this Agreement and all associated expenses, including costs relating to the transportation of material and personnel to and from Ukraine shall not exceed 40 million U.S. dollars." 

This unusual monetary limitation provision in CTR agreements has led to the establishment of a unique system of project-by-project organization, ensuring that each CTR implementing agreement has a specific sum of money available for related expenditures. This approach has also given rise to a process in which progress by recipient governments in the implementation of CTR agreements may be accompanied by amendments which incrementally increase the funds available to fulfill each agreement’s original or expanded objectives. The Defense Department notifies proposed obligations of funds to support these amendments to Congress in accordance with the Nunn-Lugar legislation. These proposals usually involve amendments to CTR implementing agreements that increase the ceiling on the amount of funds that the Department of Defense may expend on the agreement in question. By October 1995, the Defense Department had concluded twenty-three such amendments for increased funding. Amendments which expand the scope of the agreement or the


39. A provision authorizing the Department of Defense to spend up to $1 million on export control activities in Belarus, for example, was amended by substituting the phrase “2.26 million U.S. dollars.” Amendment to the Agreement Between the Department of Defense of the United States of America and the Ministry of Defense of the Republic of Belarus Concerning the Provision of Assistance Related to the Establishment of Export Control Systems to Prevent the Proliferation of Weapons of Mass Destruction from the Republic of Belarus, July 22, 1993, Hein’s No. KAV 3638, Temp. State Dep’t No. 93-153. A similar amendment increased the ceiling for expenditures on chemical weapons destruction activities from $25 million to $55 million. Amendment to the Agreement Between the Department of Defense of the United States of America and the President’s Committee on Conventional Problems of Chemical and Biological Weapons of the Russian Federation Concerning the Safe, Secure and Ecologically Sound Destruction of Chemical Weapons, Mar. 18, 1994, Hein’s No. KAV 3821, Temp. State Dep’t No. 94-107.

40. The list of agreements that appears in the Appendix to this Article includes the amendments to CTR implementing agreements.
types of assistance to be provided may also accompany a recipient government’s progress. 41

One important element in each CTR implementing agreement is the discretionary nature of the Defense Department obligation involved. Although the recipient governments are not required to reimburse or pay for any CTR assistance received, 42 the Department of Defense is usually under no legal obligation to actually provide any specific amount of assistance. This discretionary element is expressed throughout CTR implementing agreements in terms of the types of assistance the Department of Defense may, rather than shall, provide, usually in terms of monetary limits that the Department of Defense shall not exceed. For example, the operative section of one CTR implementing agreement addressing export control assistance provides: “The Department of Defense of the United States of America and its designated agents may, at their discretion and based on their assessment of the requirements, provide assistance to the Ministry of Defense of the Republic of Belarus in any or all of the following areas . . . .” 43

This discretionary element supplements an article in each CTR umbrella agreement which provides that “[t]he activities of the United States of America under this Agreement are subject to [the] availability of appropriated funds.” 44 Such provisions have already proven to be wise additions to the legal regime governing CTR assistance in light of the multi-year nature of CTR agree-

41. By October 1995, three such amendments expanding the scope or type of assistance had been concluded. See, e.g., Amendment to the Agreement Between the Ministry of the Russian Federation for Atomic Energy and the Department of Defense of the United States of America Concerning the Provision of Material, Services, and Training Relating to the Construction of a Safe, Secure, and Ecologically Sound Storage Facility for Fissile Material Derived from the Destruction of Nuclear Weapons, June 20, 1995 (on file with the Virginia Journal of International Law).

42. Although the original Nunn-Lugar legislation envisioned that the President would condition CTR assistance on reimbursement or repayment by recipient governments, the President has never imposed such a condition in any CTR implementing agreement. Soviet Nuclear Threat Reduction Act of 1991 § 222, 22 U.S.C. § 2551 note.


44. U.S.-Russia CTR Umbrella Agreement, supra note 20, art. VIII; see also U.S.-Kazakhstan CTR Umbrella Agreement, supra note 20, art. X (similar provision); U.S.-Ukraine CTR Umbrella Agreement, supra note 20, art. XII (same); U.S.-Belarus CTR Umbrella Agreement, supra note 20, art. VIII (same). These provisions are common to many agreements to which the United States is a party.
ments and the actions taken by the U.S. Congress in 1993 and 1994, which effectively terminated the availability of nearly $330 million in CTR funds for certain ongoing CTR projects.\textsuperscript{45} Although this resulted in the delay or temporary suspension of some assistance activities, ultimately the Defense Department avoided lengthy discussions with recipient governments over these "de-funded agreements" by re-notifying Congress of its intention to fund these earlier agreements out of new fiscal year 1994 and 1995 appropriations.\textsuperscript{46} In light of this tumultuous history and the increasingly arduous journey that appropriations for any foreign operations face in the U.S. Congress, the unique fiscal provisions in CTR agreements appear to correspond appropriately to fiscal (and Congressional) realities.\textsuperscript{47} It is also clear that what the U.S. Congress

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\item \textsuperscript{45} Congress chose not to extend the fiscal year 1992 Nunn-Lugar transfer authority beyond 1993, resulting in a loss of $212 million required for outstanding international commitments which were to be funded by these fiscal year 1992 funds. In addition, the following year Congress did not extend the availability of some fiscal year 1993 CTR funds beyond fiscal year 1993, by making their extension subject to an appropriations act that required a "reprogramming action." The Cooperative Threat Reduction Act of 1993. 22 U.S.C. § 5954(c); Defense Appropriations Act for Fiscal Year 1994, Pub. L No. 103-139, Title II, 107 Stat. 1418, 1426 (1993).
\item In the course of these subsequent reprogramming actions, Congress did not authorize the extension of fiscal year 1993 CTR funds or make them available beyond fiscal year 1993 for certain multi-year, ongoing CTR projects which were originally notified to be funded out of fiscal year 1993 funds, such as those funds designated for defense conversion activities in the Russian Federation.
\item This reprogramming action in the summer of 1994 directly affected several ongoing CTR programs, forcing the Department of Defense to suspend temporarily some activities under existing agreements, pending further Congressional action. Particularly difficult in this regard was the conflict between Congressional appropriation and authorization committees, reflecting in some instances different priorities for the CTR program. This problem was most apparent with respect to defense conversion and housing initiatives. When the Department of Defense proposed to use fiscal year 1995 funds to pay for previously planned defense conversion activities, the Chairman of the National Security Subcommittee of the House Committee on Appropriations wrote a letter to the Secretary of Defense reminding him that "[l]ast summer, the Department proposed to use its reprogramming authority to fund over $300 million of CTR programs. While the Committee approved the great majority of this proposal, it specifically disapproved all defense conversion and housing projects." Letter from C.W. Bill Young, Representative, U.S. Congress, to William J. Perry, Secretary of Defense (Feb. 21, 1995) (on file with the Virginia Journal of International Law). The House Appropriations National Security Subcommittee ultimately recommended that the entire $80 million in fiscal year 1995 funds that the Department of Defense had requested for defense conversion and housing be rescinded, and on February 10, 1995 the Full Committee on Appropriations endorsed this rescission. Congress ultimately cut funding from the Nunn-Lugar program by rescinding $20 million from fiscal year 1995 appropriations. Fiscal Year 1995 Emergency Supplemental Appropriations Act, Public Law 104-6, Title II, Title II, ch. II, 109 Stat. 73 (1995).
\item In July 1995, Congress again sought to reduce expenditures on the Nunn-Lugar Program and impose additional restrictions on program activities for fiscal year 1996. In
finds unpopular when addressing funding for foreign operations generally, it finds even more unpopular for funding proposed assistance for states of the former Soviet Union. 48

B. Performance and Auditing Provisions

CTR agreements employ a number of different mechanisms to ensure that the recipients of the Defense Department's assistance use it in a way that promotes the national security interests of the United States by performing specific demilitarization objectives. First, CTR implementing agreements generally authorize only the provision of materials, goods and services, as opposed to grants of cash or financial assistance. 49 As the Secretary of Defense stated in a recent report to Congress on auditing of CTR assistance: "DoD, addition to rejecting the President's fiscal year 1996 budget request of $371 million and approving only $200 million for the program, the Committee on National Security of the House of Representatives recommended "denial of funds for the construction of a fissile material storage facility in Russia; denial of authorization for Demilitarization Enterprise Fund activities; and a reduction of $4 million for other program support activities." H.R. Rep. No. 131, 104th Cong., 1st Sess. 256 (1995). The construction of this fissile material storage facility is already the subject of an existing international agreement. See Agreement Between the Department of Defense of the United States of America and the Ministry of the Russian Federation for Atomic Energy Concerning the Provision of Material, Services, and Training Relating to the Construction of a Safe, Secure, and Ecologically Sound Storage Facility for Fissile Material Derived from the Destruction of Nuclear Weapons, supra note 32. The Committee also specifically denied a $104 million request for construction of a chemical weapons destruction facility in Russia which is closely related to activities under another existing agreement. See Agreement Between the Department of Defense of the United States of America and the President's Committee on Conventional Problems of Chemical and Biological Weapons of the Russian Federation Concerning the Safe, Secure and Ecologically Sound Destruction of Chemical Weapons, supra note 21.


49. See, e.g., Agreement Between the Department of Defense of the United States of America and the Ministry of Defense of the Republic of Kazakhstan Concerning the Provision of Material, Services and Related Training to the Republic of Kazakhstan in Connection with the Destruction of Silo Launchers of Intercontinental Ballistic Missiles and Associated Equipment and Components, Dec. 13, 1993, art. 1, para. 1, Hein's No. KAV 3750, Temp. State Dep't No. 94-31 (providing that assistance shall be provided "in the form of material, services, and related training pursuant to the terms of this Agreement."). Similarly, the U.S.-Ukraine Umbrella Agreement, supra note 20, art. I, provides that CTR assistance shall be provided through implementing agreements "through the provision of technical assistance, material, services, and training."
as a matter of policy, [generally] does not directly provide any financial assistance to the recipient states. This policy forecloses the most likely path of diversion—misuse of funds."\(^{50}\) This policy is also consistent with the purpose of the original 1991 Nunn-Lugar legislation, which proponents argued would benefit U.S. businesses and be implemented through U.S. personnel, not through cash grants to the former Soviet Union. As Congressman Aspin noted, "[w]e are not going to hand over dollars here. There is no handing over of cash. That is money down a rat hole . . . . We cannot funnel economic aid into that country without losing a lot of it, and that is not what we are doing here."\(^{51}\)

Second, the Department of Defense provides all such assistance subject to the explicit condition that the recipient state use it exclusively for specific CTR implementing agreement demilitarization objectives. For example, a CTR implementing agreement concerning elimination of strategic offensive arms provides that: "The Committee for Defense Industry of the Russian Federation shall use all material, services, and training provided pursuant to this Agreement exclusively for the purpose of facilitating the expeditious elimination of ICBMs, ICBM silo launchers, SLBMs, SLBM launchers, and heavy bombers."\(^{52}\)

Third, in addition to general or overall conditions, various CTR implementing agreements require the recipient to meet a series of steps or incremental objectives before additional assistance is provided. For example, the CTR implementing agreement governing assistance for the construction of a facility for storing fissile materials derived from the destruction of nuclear weapons in Russia, conditions additional levels of assistance and the delivery of certain types of equipment on the Ministry of the Russian Federation for Atomic Energy providing required design data to the Department of Defense, written notification of site selection, written confirmation that all necessary permits and approvals have been obtained and the beginning of site preparation as defined in the agreement,

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to include site clearing, site excavation and construction of access roads and staging areas. 53

Fourth, equipment the Department of Defense provides under the CTR Program is subject to a series of special protections and performance-related restrictions. Many CTR implementing agreements include annexes that detail agreed descriptions of the particular types of equipment which Defense Department experts have concluded are required for specific dismantlement or demilitarization projects. 54 To better ensure that the recipient government uses the equipment properly and effectively, CTR agreements also establish various procedures governing the delivery of the equipment, requirements that the recipient government take responsibility for the equipment immediately upon its arrival at the place of delivery, training requirements and the establishment of related technical specifications by the Department of Defense. 55

Fifth, CTR assistance is also subject to retransfer restrictions similar to those applicable to various types of U.S. military assistance and often appear in other agreements to which the United States is a party. 56 Thus, each CTR umbrella agreement contains a provision such as the following:

Unless the written consent of the United States of America has first been obtained, the Russian Federation shall not transfer title to, or possession of, any material, training or services provided pursuant to this Agreement to any entity, other than an officer, employee or agent of a Party to this Agreement and shall not permit the use of


55. See Agreement Between the Department of Defense of the United States of America and the Committee for Defense Industry of the Russian Federation Concerning Cooperation in the Elimination of Strategic Offensive Arms, supra note 25, arts. III, IV.

56. Defense articles and related services provided to foreign governments are subject to significant retransfer restrictions under the Foreign Assistance Act of 1961 § 505(a), 22 U.S.C. § 2314(a) (1988).
such material, training or services for purposes other than those for which it has been furnished.57

Recognizing the long-term importance and political sensitivity of the possible diversion of some types of equipment to unauthorized or inappropriate uses, each of the four CTR umbrella agreements contains unique provisions that make the most sensitive and long-term obligations, such as those restricting the retransfer of U.S.-provided equipment, continue even after the agreement expires. The U.S.-Russia CTR Umbrella Agreement provides, for example, that unless the parties agree in writing, such rights “shall continue to apply without respect to time.”58

Finally, all CTR assistance is subject to broad audit and examination provisions, authorizing the Department of Defense to examine the use of all assistance provided to recipient governments and to audit all related records, information and documentation. For example, the U.S.-Belarus CTR Umbrella Agreement provides:

Upon written request provided thirty days in advance, representatives of the Government of the United States of America shall have the right, during the period of this Agreement and for three years thereafter, to examine the use of any material, knowledge obtained as a result of training, or services provided in accordance with this Agreement at sites of their location or use, and shall have the right to inspect and audit any and all records or documentation related to the use of material, knowledge obtained as a result of training, or services provided in accordance with this Agreement.59

57. U.S.-Russia CTR Umbrella Agreement, supra note 20, art. VI; see also U.S.-Kazakhstan CTR Umbrella Agreement, supra note 20, art. VI, para. 1 (similar provision); the U.S.-Ukraine CTR Umbrella Agreement, supra note 20, art. V, para. 2 (same); U.S.-Belarus CTR Umbrella Agreement, supra note 20, art. VI (same). A recipient government must also “take all reasonable measures within its power to ensure the security of material, training or services provided pursuant to this Agreement and shall protect them against seizure or conversion.” U.S.-Russia CTR Umbrella Agreement, supra note 20, art. XII; see also U.S.-Kazakhstan CTR Umbrella Agreement, supra note 20, art. VI, para. 2 (similar provision); U.S.-Belarus CTR Umbrella Agreement, supra note 20, art. VI (same).

58. U.S.-Russia CTR Umbrella Agreement, supra note 20, art. XIV; see also U.S.-Kazakhstan CTR Umbrella Agreement, supra note 20, art. XIV (similar provision); U.S.-Ukraine CTR Umbrella Agreement, supra note 20, art. XIII (same); U.S.-Belarus CTR Umbrella Agreement, supra note 20, art. XII (same).

59. U.S.-Belarus CTR Umbrella Agreement, supra note 20, art. XIII; see also U.S.-Kazakhstan CTR Umbrella Agreement, supra note 20, art. X (similar provision); U.S.-Ukraine CTR Umbrella Agreement, supra note 20, art. X (same). With respect to the
The Department of Defense is now implementing broad audit and examination rights provided for in CTR agreements, and the General Accounting Office has noted that in addition to confirming recipient countries are indeed using that assistance for its intended purposes, "[the r]esults of these audits and examinations can provide important input to planning efforts."60

C. Status of Personnel/Activities Provisions

In order to implement the CTR assistance program effectively and protect important U.S. interests in recipient countries, the Department of Defense has sought to ensure that its military and civilian personnel and contractors can perform their duties free from inappropriate interference by the host/recipient governments; that the materials imported to support CTR programs are free from customs duties, taxes, charges or other restrictions that these governments could impose; and that various U.S. government functions such as contracting and military airlift activities are free from

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60. United States General Accounting Office, Weapons of Mass Destruction: Reducing the Threat from the Former Soviet Union 7 (Oct. 1994). A June 1995 GAO report notes that "DoD has recently made some initial progress in conducting audits and examinations of CTR aid to ensure that aid is being used for the purposes intended." United States General Accounting Office, Weapons of Mass Destruction: Reducing the Threat from the Former Soviet Union: An Update 11 (June 1995). In spite of this GAO report, Congress remains concerned over the slow pace of these audits. The Committee on National Security of the House of Representatives has emphasized the importance it places on such audit and examination provisions by recently expressing "its alarm over the fact that the Department of Defense has conducted only three audit and examination visits to verify the whereabouts and condition of U.S. assistance delivered to the states of the former Soviet Union since the program's inception over four years ago." H.R. Rep. No. 131, 104th Cong., 1st Sess. 256 (1995).
inappropriate restrictions. Each of the four CTR umbrella agree-
ments therefore contains a number of provisions establishing legal
obligations for the host/recipient governments with respect to these
status issues. In many respects, these status provisions resemble
certain provisions in “status of forces agreements” (SOFAs), gov-
erning the status of U.S. military forces stationed overseas.61 These
SOFAs define the relationship between the shared sovereign pre-
rogatives of the sending and receiving states and establish various
rights, immunities and responsibilities for the force. As the United
States has a fundamental interest in ensuring that receiving states
use its assistance properly and effectively and because the funds at
issue are subject to so many unique statutory restrictions and fiscal
controls, the “status” provisions of the CTR umbrella agreements
are in many respects even more favorable to the United States than
those generally applicable to U.S. forces stationed overseas.62

To prevent potentially disruptive interference in their implemen-
tation of CTR assistance activities, all U.S. government personnel
on the territory of the states receiving CTR assistance enjoy immu-
nity from foreign criminal jurisdiction for all activities related to
CTR agreements. The agreements express this immunity in terms
according CTR personnel a status equivalent to “administrative
and technical” (A&T) personnel under the Vienna Convention on
Diplomatic Relations63 through provisions such as the following:

Military and civilian employees of the Government of the
United States of America and their families present in the
territory of the Republic of Belarus for activities related
to this Agreement shall be accorded privileges and immu-

61. See Agreement Between the Parties to the North Atlantic Treaty Regarding the
62. See, e.g., id. at art. VII(1)(b) (authorizing the “receiving State” to exercise criminal
jurisdiction over members of the force or the civilian component of the sending State in a
variety of circumstances); U.S.-Belarus Umbrella Agreement, supra note 20, art. IX
(providing complete immunity from criminal jurisdiction to military and civilian employees
and their families present in the Republic of Belarus for activities related to the
agreement).
63. Vienna Convention on Diplomatic Relations, Apr. 18, 1961, art. 37, para. 2, 23
U.S.T. 3227, 500 U.N.T.S. 95. Such A&T status also provides immunity to CTR personnel
from civil and administrative jurisdiction for acts performed within the course of their
duties.
technical staff personnel in accordance with the Vienna Convention on Diplomatic Relations of April 18, 1961.\textsuperscript{64}

In addition to providing legal status for U.S. personnel, CTR agreements also provide immunities for U.S. government functions or activities. To ensure that CTR funds are not diverted from Nunn-Lugar statutory objectives to pay taxes or other charges on assistance activities to recipient governments, each CTR umbrella agreement provides the U.S. government, its personnel, contractors and activities with broad immunities from such taxation. The agreements set forth these broad immunities in provisions such as the following: "The United States of America, its personnel, contractors, and contractors' personnel shall be exempt from liability, in connection with activities under this Agreement, for payment of any tax or similar charges assessed on the territory of Ukraine."\textsuperscript{65}

To avoid any confusion about the duty-free or tax-free status of materials the United States imports into these countries to implement CTR agreements, separate provisions explicitly provide that the import of materials "shall not be subject to any license, other restrictions, tariffs, customs charges, duties, taxes or other charges imposed by national and local authorities."\textsuperscript{66}

Although each government receiving CTR assistance is obliged to "facilitate the entry and exit of employees of the Government of the United States of America and [its] contractor personnel" for the purpose of carrying out CTR assistance activities,\textsuperscript{67} circumstances may require special protections for the entry and exit of

\textsuperscript{64} U.S.-Belarus CTR Umbrella Agreement, supra note 20, art. IX, para. 1; see also U.S.-Kazakhstan CTR Umbrella Agreement, supra note 20, art. VIII, para. 1 (similar provision); U.S.-Ukraine CTR Umbrella Agreement, supra note 20, art. VII, para. 1 (same); U.S.-Russia CTR Agreement, supra note 20, art. IX (same).

\textsuperscript{65} U.S.-Ukraine CTR Umbrella Agreement, supra note 20, art. VIII, para. 1; see also U.S.-Kazakhstan CTR Umbrella Agreement, supra note 20, art. IX, para. 1 (similar provision); U.S.-Belarus CTR Umbrella Agreement, supra note 20, art. X, para. 1 (same); U.S.-Russia CTR Agreement, supra note 20, art. X, para. 1 (same).

\textsuperscript{66} U.S.-Kazakhstan CTR Umbrella Agreement, supra note 20, art. X, para. 1; see also U.S.-Ukraine CTR Umbrella Agreement, supra note 20, art. X, para. 1 (similar provision); U.S.-Belarus CTR Umbrella Agreement, supra note 20, art. X, para. 1 (same).

\textsuperscript{67} U.S.-Russia CTR Umbrella Agreement, supra note 20, art. V, para. 1; see also U.S.-Kazakhstan CTR Umbrella Agreement, supra note 20, art. V, para. 1 (similar provision); U.S.-Ukraine CTR Agreement, supra note 20, art. IV, para. 1 (same); U.S.-Belarus CTR Umbrella Agreement, supra note 20, art. V, para. 1 (same).
U.S. government and military aircraft in connection with CTR activities. Accordingly, the CTR umbrella agreements have provisions expressly making such aircraft: "free of customs charges, . . . airport charges, and any other charges assessed on the territory of the Republic of Belarus. Aircraft owned or operated by the United States Department of Defense shall be free of customs inspections." 68

As contractors provide a significant amount of CTR assistance, one of the most important provisions in each CTR umbrella agreement ensures that U.S. law will govern the award of contracts related to the implementation of CTR activities, thus avoiding a variety of problems, including prolonged disputes over any "preferences" the recipient state might request for local companies and recipient government-affiliated institutions in the contract award process. 69 The following provision provides an example of how the agreements explicitly guarantee an award process governed by

68. U.S.-Belarus CTR Umbrella Agreement, supra note 20, art. V, para. 2; see also U.S.-Kazakhstan CTR Umbrella Agreement, supra note 20, art. V, para. 2 (similar provision); U.S.-Ukraine CTR Agreement, supra note 20, art. IV, para. 2 (same); U.S.-Russia CTR Umbrella Agreement, supra note 20, art. X, para. 1 (same). Recipient governments must also provide certain services for such aircraft. See, e.g., U.S.-Belarus CTR Umbrella Agreement, supra note 20, art. V, para. 3 (providing that "[t]he Republic of Belarus shall provide, at no expense to the United States, parking, security protection, and servicing for aircraft of the United States of America").

69. The original 1991 Nunn-Lugar legislation provided that the CTR program "should, to the extent feasible, draw upon United States technology and United States technicians." The Soviet Nuclear Threat Reduction Act of 1991 § 212(b), 22 U.S.C. § 2551 note. Congress reinforced this "buy-American" preference in the Former Soviet Union Demilitarization Act of 1992, by adding the following provision to § 1412(c): "The programs described in this section should, to the extent feasible, draw upon United States technology and expertise, especially from the United States private sector." The Former Soviet Union Demilitarization Act of 1992 § 1412(c), 22 U.S.C. § 5902(c). These statutory "buy-American" preferences make the application of U.S. contracting procedures even more important in the contract award process, notwithstanding a recent "sense of Congress" that restated this preference and added that "the United States should work with local contractors in Belarus, Kazakhstan, Russia, and Ukraine when doing so would expedite more effective use of those funds." The National Defense Authorization Act for Fiscal Year 1995, § 1209(b)(3). Consistent with the many statements of the program's congressional supporters that it was not to be a "foreign aid program," it is clear that much of the support for the original Nunn-Lugar legislation was founded on the concept that Nunn-Lugar funds were to be directed primarily to U.S. personnel and U.S. companies, not to entities of the former Soviet Union. As one proponent argued during the debate over the use of these funds, "Let me emphasize that this money is not going to the Soviet Union, this money is going to United States personnel to help dismantle weapons that threaten the United States." 137 Cong. Rec. H11,472 (daily ed. Nov. 26, 1991) (statement of Rep. Murtha). Another Congressman stated: "I want to assure my friend that there is no pass-through of money to the Soviet Union in any foreign aid form." 137 Cong. Rec. H11,471 (daily ed. Nov. 26, 1991) (statement of Rep. McDade).
U.S. law, facilitating expeditious and effective implementation of CTR-related contracts: "In the event that the United States of America awards contracts for the acquisition of material and services, including those related to construction, to implement this Agreement, such contracts shall be awarded in accordance with the laws and regulations of the United States of America." The CTR agreements also explicitly exempt the contract-related acquisition of materials and services within the recipient country from the payment of any "fees, duties, additional taxes, or similar charges imposed by national or local authorities."

Although foreign governments do not always initially welcome "status" provisions such as those found in CTR agreements, a comprehensive legal framework for long-term and diverse international cooperative activities would be inadequate without them, particularly given the United States’ desire to protect assistance programs from unnecessary interference and to better ensure that recipient governments apply assistance to agreed objectives.

D. Liability Provisions

In light of the obvious potential hazards, risks and liabilities related to any activity involving weapons and weapons materials, particularly nuclear weapons, the Department of Defense has focused considerable attention on liability provisions in the CTR program. As the Defense Department has limited legal authority to assume liabilities for the CTR program overseas (even if having such authority were deemed to be desirable) and because many aspects of CTR assistance implementation activities are beyond the U.S. government’s direct control, the Department of Defense sought and ultimately received broad and comprehensive waivers of liability for CTR-related activities from recipient governments. These waivers and related liability restrictions comprise a four-part legal regime set forth in applicable provisions of both CTR umbrella and implementing agreements.

70. U.S.-Kazakhstan CTR Umbrella Agreement, supra note 20, art. XII, para. 1; see also U.S.-Ukraine CTR Agreement, supra note 20, art. IX (similar provision); U.S.-Belarus CTR Umbrella Agreement, supra note 20, art. XI (same); the U.S.-Russia CTR Umbrella Agreement, supra note 20, art. XI (same).

71. U.S.-Kazakhstan CTR Umbrella Agreement, supra note 20, art. XII, para. 1; see also U.S.-Ukraine CTR Agreement, supra note 20, art. IX (similar provision); U.S.-Belarus CTR Umbrella Agreement, supra note 20, art. XI, para. 1 (same); U.S.-Russia CTR Umbrella Agreement, supra note 20, art. XI, para. 1 (same).
First, each CTR umbrella agreement contains a provision, such as the following, in which the recipient government waives all claims against the United States and U.S. contractors:

The Republic of Belarus shall hold harmless and bring no legal proceedings against the United States of America, its personnel, contractors, and contractors' personnel of the United States of America, for damage to or loss of property owned by the Republic of Belarus, or death or injury to any personnel of the Republic of Belarus, arising out of activities related to this Agreement.\textsuperscript{72}

Although recipient governments initially argued that their liability waivers should include exceptions for U.S. conduct that was "reckless," "grossly negligent" or "intentional," the United States refused, due to the difficulty in applying these subjective terms to some of the inherently dangerous activities contemplated, the limited U.S. authority for assuming potentially enormous liabilities, the unilateral nature of the funding for these assistance activities and the lack of direct U.S. control over many of the activities envisioned. In some cases, however, the parties included non-binding provisions stating that the United States "plans, to the maximum extent feasible, to avoid activities . . . which might give rise to damage to or loss of property, or death or injury to personnel."\textsuperscript{73} The parties also included terms which gave the United States discretion in providing compensation for CTR-related accidents. These terms provided that waivers by the recipient governments "shall not prevent the Parties from providing compensation in accordance with their national laws."\textsuperscript{74}

A second element of the liability regime for CTR assistance activities consists of an obligation undertaken by recipient govern-

\textsuperscript{72} U.S.-Belarus CTR Umbrella Agreement, supra note 20, art. VII, para. 1; see also U.S.-Kazakhstan CTR Umbrella Agreement, supra note 20, art. VII, para. 1 (similar provision); U.S.-Ukraine CTR Agreement, supra note 20, art. VI, para. 1 (same); U.S.-Russia CTR Umbrella Agreement, supra note 20, art. VII, para. 1 (same).

\textsuperscript{73} U.S.-Kazakhstan CTR Umbrella Agreement, supra note 20, art. VII, para. 1; see also U.S.-Belarus CTR Umbrella Agreement, supra note 20, art. VII, para. 1 (similar provision).

\textsuperscript{74} U.S.-Russia CTR Umbrella Agreement, supra note 20, art. VII, para. 3; see also U.S.-Kazakhstan CTR Umbrella Agreement, supra note 20, art. VII, para. 3 (similar provision); U.S.-Ukraine CTR Agreement, supra note 20, art. VI, para. 3 (same). Along similar discretionary lines, the United States also agreed in one other CTR agreement to "give sympathetic consideration to requests by the Republic of Belarus for compensation for claims arising out of activities under this Agreement." U.S.-Belarus CTR Umbrella Agreement, supra note 20, art. VII, para. 3.
ments to assume responsibility for potential third-party claims related to the implementation of CTR agreements. The agreements express this obligation in terms such as the following: "Claims by third parties, arising out of the acts or omissions of any employees of the United States of America or contractors or contractors' personnel of the United States of America done in performance of official duty, shall be the responsibility of the Russian Federation."75

A third component of the liability regime for CTR assistance activities is a provision in each CTR implementing agreement expressing the limited nature of any warranties or guarantees associated with the performance of U.S.-provided assistance. For example, an implementing agreement addressing assistance for nuclear material control and accounting provides that the Department of Defense "shall not be responsible either for ensuring the proper use of any assistance provided pursuant to this Agreement or for any case where such assistance fails to provide intended levels of performance."76 Depending on the type of assistance provided, other CTR implementing agreements specify that the Department of Defense is not responsible "in any case where material, training or services fail to provide intended levels of protection,"77 "for any failure of equipment, property, supplies, training, or services"78 or "for not achieving planned results."79

75. U.S.-Russia CTR Umbrella Agreement, supra note 20, art. VII, para. 2; see also U.S.-Kazakhstan CTR Umbrella Agreement, supra note 20, art. VII, para. 2 (similar provision); U.S.-Ukraine CTR Agreement, supra note 20, art. VI, para. 2 (same); U.S.-Belarus CTR Umbrella Agreement, supra note 20, art. VII, para. 2 (same).


Finally, CTR implementing agreements attempt to limit potential liabilities, failures and accidents by providing only equipment that is appropriate for achieving agreed technical objectives,\textsuperscript{80} that is inspected at the time of delivery to ensure conformance with established specifications\textsuperscript{81} and that is closely linked to any necessary training.\textsuperscript{82} In view of the variety of CTR projects, no simple standard provision addresses all these concerns, but each agreement attempts to establish a firm technical foundation for the particular type of assistance to be provided. For some projects, as in the case of specialized armored blankets provided to the Russian Federation to facilitate the safe and secure transportation of nuclear weapons in connection with their elimination\textsuperscript{83} and in the

\textsuperscript{80} See supra notes 54-55 and accompanying text (discussing the extensive annexes found in many CTR implementing agreements setting forth the specific equipment, material, training or services required for achieving agreed demilitarization objectives).

\textsuperscript{81} A typical provision in a CTR implementing agreement requires the following:

The Ministry of Defense of the Republic of Kazakhstan shall examine all material received pursuant to this Agreement and provide confirmation to the Department of Defense of the United States of America within thirty days of receipt that it conforms with the specifications established by the Department of Defense of the United States of America and made available in advance to the Ministry of Defense of the Republic of Kazakhstan. Any material failing to conform with these specifications shall be returned to the United States of America through the Embassy of the United States of America at Almaty within forty days of receipt for replacement.


\textsuperscript{82} See, e.g., Agreement Between the Department of Defense of the United States of America and the Ministry of Atomic Energy of the Russian Federation Concerning the Safe and Secure Transportation and Storage of Nuclear Weapons Through the Provision of Emergency Response Equipment and Related Training, June 17, 1992, art. VI, para. 1, Temp. State Dep't No. 92-171, (providing that "[t]he delivery of . . . training shall be integrated, to the maximum extent feasible, with the delivery of the equipment such that the equipment may be operated safely as soon as practical after it is delivered"). At the Defense Department's discretion, such training may be provided in a maximum of five phases, including a training program review phase, initial operator training, periodic review training, update training and a maintenance and calibration training phase. Id. at art. VI, para. 2. Annex A to this agreement sets forth a list and description of required emergency response equipment. Id. at annex A.

\textsuperscript{83} Agreement Between the Department of Defense of the United States of America and the Ministry of Atomic Energy of the Russian Federation Concerning the Safe and Secure Transportation and Storage of Nuclear Weapons Through the Provision of Armored Blankets, June 17, 1992, Hein's No. KAV 3349, Temp. State Dep't No. 92-171.
case of specialized containers\textsuperscript{84} and specialized railcars\textsuperscript{85} provided to the Russian Federation to facilitate the safe and secure transportation of nuclear weapons and nuclear weapons materials, this means lengthy and extensive joint development, testing and evaluation.

It is important to note that although recipient governments receive the explicit right to make recommendations on the specifications for necessary equipment, the Department of Defense does have discretionary powers in this area and retains the sole right to establish the ultimate technical specifications, including any applicable safety standards.\textsuperscript{86} Finally, if circumstances require additional technical arrangements, procedures or clarifications, each CTR implementing agreement contains a provision authorizing the parties' representatives to enter "additional arrangements" to carry out the provisions of the agreement.\textsuperscript{87} These "additional arrangements" allow technical representatives to address and resolve outstanding implementation issues without engaging the formal amendment process. Governing provisions in each CTR implementing agreement explicitly provide that "[i]n case of any inconsistency between this Agreement and any provisions of such arrangements, the provisions of this Agreement shall prevail."\textsuperscript{88}

\begin{footnotesize}
\begin{enumerate}
\item Agreement Between the Department of Defense of the United States of America and the Ministry of Atomic Energy of the Russian Federation Concerning the Safe and Secure Transportation and Storage of Nuclear Weapons Material Through the Provision of Fissile Material Containers, June 17, 1992 (on file with the \textit{Virginia Journal of International Law}).
\item Agreement Between the Department of Defense of the United States of America and the Ministry of the Russian Federation for Atomic Energy Concerning the Safe and Secure Transportation of Nuclear Weapons and Nuclear Weapons Material Through the Provision of Cargo and Guard Railcar Conversion Kits, Aug. 28, 1992 (on file with the \textit{Virginia Journal of International Law}).
\item See, e.g., Agreement Between the Department of Defense of the United States of America and the Ministry of Atomic Energy of the Russian Federation Concerning the Safe and Secure Transportation and Storage of Nuclear Weapons Material Through the Provision of Fissile Material Containers, supra note 84, art. I, para. 1 (requiring that the U.S. Department of Defense provide containers "conforming with technical specifications established by the DoD. In establishing these technical specifications, the DoD shall take into account the recommendations of the MINATOM and the results of technical discussions between the Parties.").
\item See Agreement Between the Department of Defense of the United States of America and the Ministry of Defense of Ukraine Concerning the Provision of Material, Services, and Related Training to Ukraine in Connection with the Elimination of Strategic Nuclear Arms, supra note 54, art. VII.
\item Id.; see also Implementing Arrangement Between the Department of Defense of the United States of America and the Ministry of Defense of Ukraine on Facilitating Cooperation Under the Agreement of December 5, 1993 Concerning the Elimination of
\end{enumerate}
\end{footnotesize}
CONCLUSION

The unique bilateral legal regime established to implement the Nunn-Lugar demilitarization program continues to grow and develop as existing CTR agreements are extended or enlarged, as the parties identify and plan new areas of cooperation and as Congress continues to provide additional appropriations for the program—albeit with additional restrictions and new conditions. In a period of increasing anxiety in the U.S. Congress over the efficacy of U.S. funding of overseas activities and a growing aversion to foreign aid programs generally, this innovative legal regime serves as a potential model for the delivery, use and accounting of bilateral, performance-oriented international assistance activities designed to achieve specific objectives, especially when those activities are subject to significant monitoring requirements and fiscal and legal restrictions.89

Recently expressed “findings” and a “sense of Congress” on the future of the Nunn-Lugar Program reaffirmed, *inter alia*, that:

[i]t is a pressing national security challenge for the United States to expedite the safe and secure dismantlement of the nuclear arsenal of the former Soviet Union.... Leakage of nuclear materials and technology, and the continuing threat of emigration of scientists and technicians from the former Soviet nuclear weapons complex, pose a grave

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89. A framework which is substantively identical to the umbrella agreement/Department of Defense implementing agreement model discussed in this paper has already been used for at least one U.S. assistance project not involving Nunn-Lugar funds. See Agreement Between the Government of the United States of America and the Government of the Republic of Latvia Concerning Technical Assistance Related to the Elimination of Conventional Weapons Systems and Facilities Formerly Controlled by the Russian Federation Armed Forces Stationed in the Territory of the Republic of Latvia, U.S.-Latvia, Aug. 12, 1994, Hein’s No. KAV 4007, Temp. State Dep’t No. 94-214; Agreement Between the Department of Defense of the United States of America and the Ministry of Environmental Protection and Regional Development of the Republic of Latvia Concerning the Provision of Assistance Related to the Dismantlement of the Unfinished Skrunda LPAR Facility Formerly Controlled by the Russian Federation Armed Forces, Aug. 12, 1994, Hein’s No. KAV 4008, Temp. State Dep’t No. 94-215.

Nunn-Lugar umbrella agreements and the international legal framework that they provide have also been incorporated by reference in other assistance agreements which do not involve Nunn-Lugar funds but share similar demilitarization goals or objectives. See Agreement Between the Department of Defense of the United States of America and the Ministry of Defense of the Republic of Belarus Concerning the Disposal of the Remnants of Dismantled Conventional Military Equipment, Aug. 12, 1994, Hein’s No. KAV 4009, Temp. State Dep’t No. 94-216.
threat to United States national security and international stability. . . . [T]he United States should expedite the availability and effective application of so-called "Nunn-Lugar" funds. 90

The bilateral legal regime now in place between the Department of Defense and government agencies of the states of the former Soviet Union provides an opportunity and a framework to achieve this congressional goal of expeditious and effective application of Nunn-Lugar funds in order to achieve specific U.S. national security objectives.

APPENDIX

LIST OF "NUNN-LUGAR" AGREEMENTS

Republic of Belarus


Agreement Between the Department of Defense of the United States of America and the Ministry of Defense of the Republic of Belarus Concerning the Provision of Material and Services for the Establishment of a Continuous Communications Link, Jan. 15, 1993, Hein's No. KAV 3481, Temp. State Dep't No. 93-37; Extension thereto of October 20, 1994 (on file with the Virginia Journal of International Law);

Agreement Between the Department of Defense of the United States of America and the Ministry of Defense of the Republic of Belarus Concerning the Conversion of Military Technologies and Capabilities into Civilian Activities, July 22, 1993, Hein's No. KAV 3637, Temp. State Dep't No. 93-152;

Agreement Between the Department of Defense of the United States of America and the Ministry of Defense of the Republic of Belarus Concerning the Elimination of Strategic Offensive Arms, June 23, 1995 (on file with the Virginia Journal of International Law);


Republic of Kazakhstan


Agreement Between the Department of Defense of the United States of America and the Ministry of Defense of the Republic of Kazakhstan Concerning the Provision to the Republic of Kazakhstan of Material and Services for the Establishment of a Government-to-Government Communications Link, Dec. 13, 1993 (on file with the Virginia Journal of International Law); Amendment thereto of June 30, 1995 (on file with the Virginia Journal of International Law);

94-33; Amendment thereto of June 30, 1995 (on file with the Virginia Journal of International Law);

Agreement Between the Department of Defense of the United States of America and the Ministry of Defense of the Republic of Kazakhstan Concerning the Provision of Material, Services, and Related Training to the Republic of Kazakhstan in Connection with the Destruction of Silo Launchers of Intercontinental Ballistic Missiles and Associated Equipment and Components, Dec. 13, 1993, Hein’s No. KAV 3750, State Dep’t No. 94-31; Amendment thereto of July 1, 1995 (on file with the Virginia Journal of International Law);

Agreement Between the Department of Defense of the United States of America and the Ministry of Defense of the Republic of Kazakhstan Concerning Control, Accounting, and Physical Protection of Nuclear Material to Promote the Prevention of Nuclear Weapons Proliferation, Dec. 13, 1993, Hein’s No. KAV 3753, Temp. State Dep’t No. 94-34; Amendment thereto of June 30, 1995 (on file with the Virginia Journal of International Law);


Russian Federation

Agreement Between the United States of America and the Russian Federation Concerning the Safe and Secure Transportation, Storage and Destruction of Weapons and the Prevention of Weapons Proliferation, June 17, 1992, U.S.-Russia, Hein's No. KAV 3349, Temp. State Dep't No. 92-171 [the US-Russia CTR Umbrella Agreement];


Agreement Between the Department of Defense of the United States of America and the Ministry of Atomic Energy of the Russian Federation Concerning the Safe and Secure Transportation and Storage of Nuclear Weapons Material Through the Provision of Fissile Material Containers, June 17, 1992 (on file with the Virginia Journal of International Law);


Agreement Between the Department of Defense of the United States of America and the President's Committee on Conventional Problems of Chemical and Biological Weapons of the Russian Federation Concerning the Safe, Secure and Ecologically Sound Destruction of Chemical Weapons, July 20, 1992 (on file with the Virginia Journal of International Law); Amendment thereto of March 18, 1994, Hein’s No. KAV 3821, Temp. State Dep’t No. 94-107;

Agreement Between the Department of Defense of the United States of America and the Ministry of the Russian Federation for Atomic Energy Concerning the Safe and Secure Transportation of Nuclear Weapons and Nuclear Weapons Material Through the Pro-
vision of Cargo and Guard Railcar Conversion Kits, Aug. 28, 1992 (on file with the Virginia Journal of International Law); Amendment thereto of March 23, 1994 (on file with the Virginia Journal of International Law);

Agreement Between the Department of Defense of the United States of America and the Ministry of the Russian Federation for Atomic Energy Concerning Technical Assistance For Design of a Safe, Secure, and Ecologically Sound Storage Facility for Fissile Material Derived from the Destruction of Nuclear Weapons, Oct. 5, 1992 (on file with the Virginia Journal of International Law);


Agreement Between the Department of Defense of the United States of America and the Ministry of the Russian Federation for Atomic Energy Concerning the Provision of Material, Services, and Training Relating to the Construction of a Safe, Secure, and Ecologically Sound Storage Facility for Fissile Material Derived from the Destruction of Nuclear Weapons, Sept. 2, 1993, Hein's No. 3667, Temp. State Dep't No. 93-178; Amendment thereto of June 20, 1995 (on file with the Virginia Journal of International Law);


Ukraine


Agreement Between the Department of Defense of the United States of America and the Expert and Technical Committee of the Cabinet of Ministers of Ukraine Concerning the Provision of Assistance to Ukraine Related to the Establishment of an Export Control System to Prevent the Proliferation of Weapons of Mass Destruction from Ukraine, Dec. 5, 1993, Hein's No. KAV 3758, Temp. State Dep't No. 94-39; Amendment thereto of March 21, 1994, Hein's No. KAV 3831, Temp. State Dep't No. 94-117; Amendment thereto of June 27, 1995 (on file with the Virginia Journal of International Law);

Agreement Between the Department of Defense of the United States of America and the Ministry of Defense of Ukraine Concerning the Provision of Material, Services, and Related to Training to Ukraine in Connection with the Elimination of Strategic Nuclear Arms, & annexes A, B, C, D thereto, Dec. 5, 1993, Hein's No. KAV 3760, Temp. State Dep't No. 94-41; Amendment 1 to Annex C of December 18, 1993, Hein's No. KAV 3761, Temp. State Dep't No. 94-42; Amendment 2 to Annex C of December 18, 1993,
Hein’s No. KAV 3762, Temp. State Dep’t No. 94-43; Amendment of March 21, 1994, Hein’s No. KAV 3830, Temp. State Dep’t No. 94-116; Amendment thereto of June 27, 1995 (on file with the Virginia Journal of International Law); Implementing Arrangement of June 27, 1995 (on file with the Virginia Journal of International Law);

Agreement Between the Department of Defense of the United States of America and the Ministry of Defense of Ukraine Concerning the Provision to Ukraine of Emergency Response Equipment and Related Training in Connection with the Removal of Nuclear Warheads from Ukraine for Destruction in the Course of Elimination of Strategic Nuclear Arms, Dec. 18, 1993, Hein’s No. KAV 3759, Temp. State Dep’t No. 94-40;

Agreement Between the Department of Defense of the United States of America and the Ukrainian State Committee on Nuclear and Radiation Safety Concerning Development of State Systems of Control, Accounting, and Physical Protection of Nuclear Materials to Promote the Prevention of Nuclear Weapons Proliferation from Ukraine, Dec. 18, 1993, Hein’s No. KAV 3763, Temp. State Dep’t No. 94-44; Amendment thereto of March 21, 1994, Hein’s No. KAV 3828, Temp. State Dep’t No. 94-114; Amendment thereto of June 27, 1995 (on file with the Virginia Journal of International Law);


Agreement Between the Department of Defense of the United States of America and the Ministry of Machine Building, Military-Industrial Complex, and Conversion of Ukraine Concerning the Conversion of Enterprises of the Military-Industrial Complex, Mar. 21, 1994, Hein’s No. KAV 3829, Temp. State Dep’t No. 94-115; Amendment thereto of June 27, 1995 (on file with the Virginia Journal of International Law);

Agreement Between the Department of Defense of the United States of America and the Ministry of Defense of Ukraine Con-