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SECURITY & NONPROLIFERATION



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до Договору
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Dear Reader!



Sergiy Galaka

This issue of our journal is dedicated to the event that happened ten years ago with consequences that have had a tremendous impact on the formation of Ukraine as an independent state and its entry into the world community. The renouncement of nuclear weapons and accession to the Treaty on the Non-proliferation of Nuclear Weapons count among the most important acts on the part of Ukraine, which, in many respects, have determined Ukraine's role and standing in the world for decades ahead. That step taken by the young state, which is yet to be duly appreciated by the world, nonetheless had far-reaching after-effects on the retention of the NPT and the NPT-based nuclear non-proliferation regime for ensuring security and stability worldwide.

It was both nuclear-weapon states and other influential countries of the world that were involved in finding a solution to the problem that had emerged in the aftermath of the collapse of the USSR as a nuclear superpower. The nuclear disarmament was primarily facilitated by Western partners; the U.S. and EU countries, especially Sweden and Norway; and Japan - a country to have been the first to experience all consequences the use of nuclear weapons entails.

All the details of that difficult period of Ukrainian history are yet to be inquired into. It is likely to take historians and political scientists a few decades to come up with an exhaustive appreciation of the renouncement of nuclear weapons, when the archives in the states who played the decisive role in those events, namely the U.S. and Russian Federation, will be made available for researchers.

The articles making up this issue present a retrospective review of the events of the past decade and evaluations of their consequences for Ukraine. They cover a wide range of political, security-related, legal, and economy issues; Ukrainian export control formation and development problems; international cooperation in the area of nuclear non-proliferation. The authors sought to adhere to an objective and balanced approach, yet not trying to circumvent controversial points. We are hopeful that the issue will be of interest for both specialists and more general readership.

Sergiy Galaka

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A Decade of Non-Nuclear Status as an Important Factor of Ukraine's Independence



I. O. Dolhov,
Deputy Minister of Foreign Affairs of Ukraine

Ten years ago, in 1994, Ukraine approved a number of important decisions in support of its participation in the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) as a non-nuclear-weapon state as well as in the Treaty between the United States of America and the Union of Soviet Socialist Republics on the Reduction and Limitation of Strategic Offensive Arms (START I). The said events were of extraordinary importance in terms of building Ukraine's independence and ensuring yet further progress in pursuing nuclear disarmament and strengthening of the global nuclear weapons non-proliferation regime.

The process of Ukraine's formation as an independent state went in parallel with fundamental political shifts in the system of international relations of the early 1990s. That period featured both positive tendencies – eased international tension resulting from the termination of bloc-to-bloc antagonism – and negative ones; particularly, a 'security vacuum' that emerged in Central and Eastern Europe following the break-up of the Warsaw Pact organization and general instability and unpredictability of the international milieu.

Such conditions warranted recognition and respect by foreign states of Ukraine's sovereignty, its political independence, and territorial integrity to be made a top foreign-policy priority, together with integration of Ukrainian

economy with the world's economic system and admission of the young state to leading world's and Euro-Atlantic institutions.

Given the international situation and the process of in-depth reductions of nuclear weapons as envisaged in the START I Treaty (1991), Ukraine, left with a Soviet Union legacy of the world's third largest nuclear weapons power, had to make a crucial decision on the fate of the inherited nuclear weapons and, accordingly, on its becoming party to the above-said Treaty and the Nuclear Non-Proliferation Treaty (1968).

Such a decision was eventually made. Ukraine's participation in the START-I Treaty and accession to the NPT came as a result of the implementation of history-making resolutions ma-

de by the Supreme Council (Verkhovna Rada) of Ukraine, codified in documents such as the Declaration of Ukraine's National Independence (where Ukraine, still being part of the Soviet Union, originally voiced its adherence to the three non-nuclear principles), Declaration of Ukraine's Non-nuclear-weapon Status (24 October, 1991), Appeal to Parliaments and Nations of the World (5 December 1991). Thus Ukraine's progress towards disarmament was determined.

Nevertheless, it proved to be a challenge to substantiate the declared intent to eliminate nuclear weapons stationed in Ukraine and to accede to the NPT as a non-nuclear-weapon state. Ukraine faced a real "nuclear dilemma", whose resolution called for comprehensive and thorough analysis and evaluation of potential consequences of alternative approaches to its own nuclear policy. Such analysis had been completed to provide the basis for taking steps towards the non-nuclear status.

The signing of the Lisbon Protocol in May 1992 became the crucial event in this context, securing for Ukraine a START-I equitable party status along with Russia, Belarus, and Kazakhstan.

As the Supreme Council of Ukraine was approving a resolution on ratification of the START Treaty in November 1993, it assumed that Ukraine would fulfill its obligations under this Treaty once adequate international financial and technical assistance is provided and its national security is reliably guaranteed.

One should note that it was already clear even at that stage that Ukraine's accession to the NPT as a non-nuclear-weapon state and complying with the START Treaty provisions was a prerequisite to its integration into the in-

ternational community as a full participant in international processes. Therefore the Ukrainian administrative authorities focused all their efforts on creating conditions necessary for implementing the policy of Ukraine's nuclear disarmament while assuring national security.

One of foreign policy accomplishments on this path was international financial aid committed to the end of Ukraine's nuclear disarmament, particularly on the part of the U.S., Germany and Japan; security assurances obtained from all five nuclear-weapon states under the Budapest memorandum on security assurances due to Ukraine having acceded to the NPT (December 1994), and unilateral statements made by China and France.

The key accomplishments, however, that were made possible owing to the ratification by Ukraine of the START-I Treaty and the 16 November, 1994 adoption by the Supreme Council of Ukraine of the decision to accede to the NPT, proved to be the building of Ukraine's international image as of a reliable, predictable, and responsible partner; development of international cooperation on matters critical for the young state; its admission to the international community of civilized countries – in other words – actual firm establishment of Ukraine as an independent sovereign state.

By 5 December, 2001 Ukraine had fulfilled its commitments to dispose of strategic offensives stationed within its territory. Besides, in compliance with its international obligations, Ukraine undertook monitoring of disposition at Russian nuclear facilities of all nuclear ammunition removed from its territory in 1992–1996.

Presently Ukraine continues to fulfill its obligations under the START Treaty

with respect to undeployed inter-continental ballistic missiles (ICBMs) SS-24, specifically their equipped engine frames containing solid rocket fuel. To date, only the first phase in eliminating these ICBMs has been completed. The second phase depends on setting up a solid rocket fuel disposition facility (FDF) in Ukraine. The plan was to achieve this goal as part of cooperation with the U.S. under the Cooperative Threat Reduction program, based on the related bilateral arrangements made in 1993. The U.S. Department of Defense, however, suspended the funding of this joint project appealing to overspending, technical complexity, and lack of urgency.

In search of alternative ways out of the actual situation, work was initiated to consider the possibility that other Western partners who had actively cooperated in supporting Ukraine's disposition of strategic offensives be involved in resolving the problem of solid rocket fuel disposition.

In this context, of a great potential is the G8 initiative Global Partnership against the Spread of Weapons and Materials of Mass Destruction launched during the State and governmental leaders summit in late June 2002 in Kananaskis (Canada).

The said initiative seeks to develop bi- and multilateral cooperation in addressing non-proliferation of weapons of mass destruction (WMD), disarmament, counter-terrorism and nuclear safety issues under specific projects with a commitment to raise about \$20 billion to fund their implementation within the next decade since 2002. Initial focus of the Global Partnership effort was on cooperation projects in Russia. Nonetheless, the initiative welcomes participation by other recipient states wil-

ling to comply with the Principles to Prevent Terrorists, or Those that Harbour Them, from Gaining Access to Weapons or Materials of Mass Destruction along with the Guidelines for New or Expanded Cooperation Projects.

In early 2003 Ukraine stated its intent to get involved in the Global Partnership implementation as an aid-recipient state. In autumn of 2003 Ukraine submitted for G8 review a number of proposals on possible joint projects under the said initiative, which are a top priority in terms of national interests. In particular, project proposal related to elimination of ICBM SS-24 solid rocket fuel.

This September, following intensive and numerous rounds of negotiations held at all levels with G8 representatives in 2003-2004, a positive decision on Ukraine's participation in the initiative was adopted. Thus the G8 gratified Ukraine's pursuit of the status of a recipient state under the Global Partnership, which would enable our country's prospective involvement in the implementation of significant international non-proliferation and disarmament projects.

Having thus made an unprecedented contribution to practical nuclear disarmament and non-proliferation, Ukraine seems not to have settled on what has been accomplished. It continues to play a notable role in that area, specifically to be observed in taking a pro-active posture while participating in such important international fora as NPT Review Conference Preparatory Committee (NPT PC) sessions. At NPT PC's Third Session, for example, held this spring in New-York City, Ukraine (jointly with Austria and Sweden) co-authored a working document containing specific proposals to reduce the exis-

ting stock of non-strategic nuclear weapons.

Committed to strengthening measures to counter the WMD proliferation threat, Ukraine increased its efforts in support of the Proliferation Security Initiative (PSI).

The Initiative was launched as supplementary to the existing national and international mechanisms of countering WMD proliferation and seeking to strengthen them through effective cooperation in this area between states, based on policy commitments assumed by them.

31 May through 1 June 2004, a large-scale conference was held in Krakow, Poland to commemorate the first anniversary of the PSI, which continues to gain yet broader international support. At that conference a declaration

was made on behalf of Ukraine, stating political support for the PSI, and Ukraine recently joined in that Initiative. Such a step is consistent with the objectives of UN Security Council Resolution 1540 related to WMD non-proliferation (approved 28 April, 2004), and therefore is a proof of Ukraine's responsible and consistent policy in this area and another Ukraine's contribution to the strengthening of international efforts aimed at overcoming the threat of proliferation of WMD, their delivery means, and associated material and equipment. Ukraine is committed to supporting the implementation of PSI objectives in compliance with the fundamental principles and norms of modern international law given no interference with national interests and national legislation.

Swedish Reflections and Deflections on the Ukrainian Nonproliferation Experience



Sarmite Andersson and Lars van Dassen,
Swedish Nuclear Power Inspectorate, SKI

At a time when the international community is facing various challenges in the shape of terrorist threats, uncertainty concerning the stabilisation of Iraq and the risks of there being another wave of proliferation of nuclear weapons (Iran, North Korea) – just to mention a few concerns – we also find ourselves in the pleasant situation of being able to celebrate the tenth anniversary of Ukraine joining the Nonproliferation Treaty.

Against all odds?

This fact that Ukraine did join the NPT in November 1994 and that it has developed into a robust, conscientious and important nonproliferation actor merits much attention. In fact, it can in retrospect be regarded as a miracle that Ukraine chose this road and not one where it would in some fashion be a state with nuclear weapons at its disposal. Considering that Ukraine was: Re-born as an independent state; had and has borders with many more states than most other nations; that mainly Russia made territorial claims against

Ukraine as well as the mere fact that the nuclear weapons already were there and did not have to be developed and built – all that makes it so much more important to appreciate the Ukrainian choice. On top of this, Ukraine could maintain that there were two other states in Europe, France and the UK, which had thought it proper and necessary to develop and keep nuclear weapons. Given its size and geographical location Ukraine had no less reasons to insist on nuclear weapons than France and the UK did.

Nevertheless, Ukraine made a fundamentally different choice. In a certain sense it was a very modern choice. In the world of today we are becoming accustomed to notions that regard security as matters of for instance social and economic issues and the absence or reduction of terrorist threats. Against these and other threats nuclear weapons arsenals from the Cold War with all their assumed logic and nomenclature of "deterrence", "second-strike capabilities", "escalation ladders", etc. are of little use. Or, we may at least

say they make less and less sense for the part of the world where Ukraine is situated. But in the early 1990s, it was uncertain whether the Cold War would be replaced with another kind of cold War in Europe and therefore it was impossible to know whether nuclear weapons would be of use and relevance in a near or distant future.

The world ought to be grateful

Having said this it is important make one radical statement: One of the reasons for Europe to develop in a fairly balanced and benign manner after the break-up of the Soviet Union is that Ukraine gave up the Soviet "lost property nuclear weapons". Had Ukraine tried to keep the weapons or actually kept them and gained access to launching codes etc., then it could well have led to certain reactions among other states and this could have militarized developments in Europe, and in the ultimate event led some other states to play with the nuclear ambition. So when we look back at the peaceful developments in Europe over the past decade much of it has to be attributed to the wise and bold decision to send the nuclear weapons on Ukrainian territory back to Russia.

What Ukraine demanded in return was modest, namely some kind of codified security guarantees. Moreover, it was fair to expect financial assistance from the West¹. In reality, Ukraine received much less than it had reasons to expect – and which it had been promised. The agreements concerning

pledges by nuclear weapon states that would not threaten or use nuclear weapons against Ukraine (negative security guarantees) and pledges related to the ways nuclear weapon states would defend Ukraine against nuclear weapons aggression (positive security guarantees) were kept in general wordings and were not phrased or collected in a codified manner. Moreover, the financial assistance and cooperation never reached the foreseen or expected levels. This is a fact that Ukrainians in various positions and with various functions have noted and stated repeatedly.

Important lessons for others and the future

The Ukrainian accession to the NPT may have been an important contribution to "saving the neck" of the NPT and the non-proliferation regime. Due to the intricate balances of Nuclear Weapon States and Non-Nuclear Weapon States, security guarantees, imports and exports of civilian technologies, etc. etc. the regime has a large need for "success stories". It cannot live with too many situations or mishaps that were unforeseen by the treaty and its negotiation history. Too many unforeseen events will always increase the likelihood that the NPT becomes redundant for capturing proliferation risks. On the other hand, the ability to compromise and make a certain potential proliferation situation bend over and fit into the regime as we know it will extend and expand the livelihood of the regime. This is where the "Ukrainian

¹ The information in this article is based on many years of scholarly studies of the nuclear non-proliferation phenomenon. Moreover, there is an input to the work that we have achieved from working with Ukraine in the particular field of nuclear non-proliferation for many years. The issue of Ukraine's "life and times in nuclear non-proliferation" continues to attract attention. This is important as new information, documents and connections between events continue to surface. The best recent synthesis and analysis of the entire chain of events and their causes and consequences is: Lesya Gak, "Denuclearization and Ukraine: Lessons for the Future", *The Nonproliferation Review*, vol. 11, no. 1, 2004, pp. 106-135.

experience" comes into the picture as something that carries lessons of importance far beyond itself:

First of all, we will have both hope and a pool of experience to draw from the next time another Nuclear Weapon State breaks apart. When this will happen and whom it will happen to is hard to tell. But it has happened before that a state of enormous military strength was unable to uphold itself and control its social processes. And if it could happen before it can happen again. The Ukrainian accession to the NPT was preceded by Ukrainian accession to the START I Treaty. That itself was a powerful instrument not least because it gave Ukraine status to be a shareholder of this Treaty. Such circumstances may not exist in the future when the next Nuclear Weapon State breaks up. But it may be possible to accommodate with the future challenges due to the fact that we already have some kind of a workable procedure that can be adapted to a new situation.

Secondly, Ukraine is a great example when it comes to talking to new generations of would-be proliferators. If Ukraine under the stress and uncertainty that it faced ten to fifteen years ago could decide to give up hundreds of nuclear warheads, then there is very little of a case and arguments for other states that think nuclear weapons could their boost or guarantee their security.

Thirdly, Ukraine is the most radical example of nuclear disarmament and nonproliferation the world has ever seen. And just how radical the Ukrainian case is, is good ammunition when arguments for nuclear disarmament and nonproliferation have to be furthered. Other states may want to receive pra-

ise for their achievements in the disarmament of strategic nuclear weapons (the USA and Russia), others may think their own self-restraint with respect would-have-been proliferation is worth mentioning (Sweden, Egypt, Germany, Switzerland, Taiwan, Brazil, Argentina etc. etc.). But in this context the largest step is and remains the Ukrainian step that literally was a move from being the world's third largest possessor of nuclear weapons to being the smallest; a state with no nuclear weapons and ambitions! In this sense Ukraine chose not to belong to one little exclusive group but rather it chose to belong to the 95% of all states on earth that have no nuclear weapons.

Sweden's cooperation with Ukraine

Sweden is not the largest of the cooperation partners in the field of nuclear nonproliferation but we usually take pride in believing we have been the first and the most persistent. The Swedish Nuclear Power Inspectorate started its cooperation activities in Ukraine in 1992 and has a record of unbroken presence and commitment to the practical non-proliferation work. During the first many years the cooperation were in the field of nuclear materials control at the level of the regulatory authority and at the nuclear power plants in operation. It is thus noteworthy that the cooperation in nuclear materials control and safeguards started before Ukraine acceded to the NPT and later signed a safeguards agreement with the IAEA. In this sense, Sweden had no guarantee that the training and equipment provided to the regulator and the facilities would be used in the context of Ukraine being a Non-

Nuclear Weapon State that had placed itself under the verification requirements of the IAEA. This was a risky undertaking if one considers the project from the angle of responsibility with respect to using "Swedish taxpayers money". But in retrospect it was worth taking this risk as Ukraine got a head start into fulfilment of its IAEA safeguards obligations. In the context it is necessary to note that the decisions to join the NPT were made by the executive and legislative branches of the Ukrainian political system and this was a high-politics issue. The safeguards dimension did not play into the NPT discussions and therefore the Swedish efforts did not influence the eventual choice. But from the point of SKI this was not the objective either: Safeguards and nuclear materials accounting were and remain extremely important issues in their own right! Therefore the cooperation in this field has remained a part of the Swedish-Ukrainian cooperation efforts. Over time this has led to the development of more and more sophisticated computer software programmes for nuclear materials control and this software is now in operation at all four nuclear power plants and at the regulatory office of the State Nuclear Regulatory Committee of Ukraine, SNRCU.

A comprehensive and fruitful co-operation during the 1990's was carried out in the field of nuclear legislation. Swedish legal experts assisted SNRCU and Verkhovna Rada's Committee on Fuel and Energy Complex, Nuclear Policy and Nuclear Safety in reviewing of draft laws and regulations on physical protection, radiation protection and export/import control.

In the late 1990s Sweden established a cooperation with Japan and

the USA on the provision of physical protection for the Kharkiv Institute for Physics and Technology, KIPT. This work demanded much in terms of developing a design, buying and transporting the equipment to the facility and installing it. The result has been one which both KIPT and the donors can be proud of. Moreover, the project gave SKI many experiences with respect to project management abroad and these experiences have proven to be valuable in other contexts as well.

Over the past five years cooperation between Sweden and Ukraine has been expanded to also including combating illicit trafficking of nuclear and radioactive materials, as well as efforts in the field of strengthening the national export control system. The investment may seem modest in financial terms but with respect to the effectiveness and outreach of these projects, we can really say that the activities make us proud and convinced that we contribute to something of value to the country and citizens of Ukraine at large. In the field of illicit trafficking we work with a non-profit organization that implements training courses in order to increase the national capability to prevent and interdict illicit trafficking. And it needs to be added that the training materials are the technical documents developed by the IAEA for these purposes. With respect to assuring greater efficiency in combating illicit trafficking, the Swedish-Ukrainian cooperation has also been fortunate to enjoy the furtherance and protection provided by the Parliamentary Committee on Nuclear Fuel and Energy Complex, Nuclear Policy and Nuclear Safety. This is invaluable and had we similar support in other countries much would become much more efficient.

In the field of export controls we similarly work with a Ukrainian non-profit organization with a view to assuring that training and information about the export control obligations and the procedures for their implementation are spread to the various companies that can export materials and technologies of strategic importance. We have found this cooperation to be very efficient and based on a sound balance of training efforts and dissemination of information as well as analyses or commentaries of the national export control legislation. All in all we hope this will contribute to the immensely important work done by the State Service for Export Control of Ukraine.

The future

In October 2004, SKI convened representatives from most authorities and non-profit organizations that work in the nuclear non-proliferation field. We did this with an ambition of reviewing some of the past activities and identify issues that we should maybe address in the future. The meeting which was held in Kiev, 12-14 October and delivered conclusions far beyond our expectations and we therefore feel that we have an outline of the activities that should be added to the activities we have in operation already. The identified issues will have to be stipulated with great care in cooperation with our Ukrainian counterparts but it is possible to say at this stage that issues related to physical protection, legislation and training in the field of physical protection, the management and storage of spent nuclear fuel ended high on the agenda.

It is with much pleasure and with high expectations we thus open additional tracks of cooperation activities in the

near future. This expansion fits well into the overall political ambitions that the Swedish government has expressed with respect to the cooperation with Ukraine on a bilateral basis and in relation to the developing integration of Ukraine in Europe.

From an SKI and Swedish point of view the entire issue of cooperation and its good past record can be explained by one word, namely trust! We have deep confidence and trust in our Ukrainian cooperation partners and therefore we are not afraid to create broader and deeper cooperation activities.

At this stage, ten years after Ukraine joined the NPT we think Ukraine has been neglected by the broader group of eligible cooperation partners in Europe and abroad. This has to change. Therefore, SKI has discussed with the Parliamentary Committee on Fuel and Energy Complex, Nuclear Policy and Nuclear Safety to convene a major international conference in early April 2005. The conference would have to address what happened ten and fifteen years ago and also track the developments after Ukraine joined the NPT. Then the conference could go into addressing the remaining issues that have to be considered if we want nuclear nonproliferation and security to be completed so to speak. And in this context it is important to invite the wider group of states that are financial donors in the nuclear nonproliferation field. In this respect much could be achieved: It would be important to create a broader understanding of the seminal and historic importance of the Ukrainian decision to join the NPT – and it would be possible to use this as an argument that can produce a larger international commitment to nuclear security in Ukraine.

A Nuclear Weapon-Free Decade

On the occasion of the tenth anniversary of Ukraine's accession to the NPT



Sergiy Galaka,
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Kyiv National Taras Shevchenko University
Institute for International Relations

On 5 December of this year, a decade of Ukraine's accession to the Treaty on the Nonproliferation of Nuclear Weapons (NPT) as a non-nuclear-weapon state will be complete. On this day in 1994, at the OSCE Budapest Summit, the ratification instruments on Ukraine's accession to the NPT were delivered to the Treaty depositaries, and the Budapest Memorandum was signed.

Ten years is a timespan allowing a broader outlook on this event, extraordinary in every respect, a more reliable appreciation of its impact on Ukraine's foreign policy and of the status of the nonproliferation regime, which is a critical component of the system for maintaining security worldwide.

Nuclear Warfare Arsenal Stationed within Ukrainian Territory

In the aftermath of the USSR's breakup, the territory of the former Ukrainian Soviet Socialist Republic had been left with a part of Soviet nuclear complex second only to Russia. The strategic nuclear arsenal stationed within the territory

of Ukraine as of September, 1990 included 176 silo-based ICBMs with 1825 nuclear warheads and 44 strategic bombers with a payload of 588 cruise missiles. Stationed in Ukraine were 130 RS-18 (U.S.-classified as SS-19) ICBMs with 6 individually-targeted warheads capable of delivering 3600 kg to a 10.000 km range and 46 RS-22 (U.S.-classified as SS-24) ICBMs, a production of the Dnipropetrovsk Oblast-based Pavlograd Engineering Plant, equipped with 10 nuclear warheads and capable of delivering 3200 kg within up to a 10.000 km distance. 25 Tu-95 strategic bombers and 19 Tu-160 supersonic strategic bombers were able to deliver winged missiles to the continental part of the U.S.

Located in Ukraine were the USSR's largest missile-building plant Yuzhmash and Yuzhnoye Design Bureau, which developed and produced military and civilian launch vehicles including the world's most powerful missile systems RS-19 (U.S.-classified as SS-18), nicknamed Satan in the West because of their great power. Those missiles were capable of delivering 10 individually-targeted warheads with a total payload of 7.600 kg to a 11.000 km range.

The Kharkiv-based Khartron Association developed control systems for ballistic missiles and various space vehicles including ballistic missile launch decoders (PALs).

Background

The April 26, 1986 Chernobyl Disaster had evoked fervent anti-nuclear sentiments in the Ukrainian society. Following the July 16, 1990 adoption of the Declaration of State Sovereignty, by the Supreme Soviet of Ukraine, the then Ukrainian parliament, made Ukraine's pursuit of non-nuclear status one of key provisions of this document. It was a tribute not only to the post-Chernobyl sentiments, but also to the endeavors to distance itself from the Union centre.

Once Ukraine had declared itself independent on August 24, 1991, it was confronted with increased pressure applied by the West that was focused on the fate of the Soviet nuclear arsenal. The October 24, 1991 Supreme Soviet Statement on the Non-Nuclear Status of Ukraine and the ambition to see Ukrainian independence recognized, apparently came as a reaction to the West's concern about the future of the nuclear weapons stationed in Ukraine. The Statement indicated that the nuclear weapons formerly owned by the USSR were located within the territory of Ukraine on a temporary basis while Ukraine insisted on the right to control the non-use of those weapons and would pursue a policy for total elimination of nuclear weapons and their deployment components stationed in Ukraine. The Statement reflected Ukraine's intent to accede to the NPT as a non-nuclear-weapon state.

Following the declaration of independence, Ukraine signed agreements

on retention of control over nuclear weapons on December 21 and 30, 1991. Tactical nuclear weapons were removed from Ukrainian territory in May 1992.

On May 23, 1992, Ukraine signed the Lisbon Protocol to the START-1 Treaty with Article V requiring its accession to the NPT as a non-nuclear-weapon state. In his letter to the U.S. President George Bush, President Leonid Kravchuk committed to completing Ukraine's nuclear disarmament within seven years, i.e. by 1999.

The Ukrainian leadership, supportive of non-nuclear status aspirations, insisted on obtaining legally binding security guarantees, financial and technical assistance, and an environmentally safe nuclear weapon disposition procedure. In addition, Ukraine demanded compensation for warfare uranium and plutonium extracted from nuclear warheads.

The nuclear disarmament process was not easy and dealt with major opposition both by political forces and the military-industrial complex being part of the All-Union Military-Industrial Complex. The dispute had reached its climax in late 1992 through 1993, when the tactical nuclear weapons that were considered the most practicable nuclear force component able to be placed under Ukraine's control had already been removed from the territory of the country.

On November 18, 1993, The Supreme Council of Ukraine ratified the START-1 Treaty with numerous provisos, including the refusal to immediately accede to the NPT. Russia and Western states, U.S. in particular, applied economic and political pressure on Ukraine, coercing it to promptly take steps towards nuclear disarmament

and entry into the nuclear nonproliferation regime. The situation was boding imminent, extremely negative consequences to the young independent state, up to political isolation and economic sanctions. Albeit no legal grounds had been there – Ukraine had not violated any legally binding documents. Nonetheless, the predicament urged the Ukrainian leadership to seek a compromise with the mightiest states of the world – U.S. and Russia. Ukrainian diplomacy's painstaking effort resulted in a breakthrough in that area, vital for the young state.

Presidents of the Russian Federation, United States of America, and Ukraine signed a Trilateral Statement on January 14, 1994 in Moscow. The signing was preceded by negotiations between Messrs. L. Kravchuk and B. Clinton during U.S. President's short-term sojourn on his way to Moscow. The Statement re-affirmed Ukraine's readiness to relocate all nuclear warheads to Russia within a seven-year period of the START-1 Treaty's entry into force. The Statement re-affirmed Russia's and U.S. intent to extend security assurances to Ukraine upon its accession to the NPT as a non-nuclear-weapon state. The U.S. made a commitment to providing financial aid and technical assistance in dismantling and transport of nuclear weapons to Russia, and in disposing of the associated infrastructure within Ukrainian territory. Besides, in accordance with the Statement Appendix, Ukraine began to receive nuclear fuel in compensation for the uranium and plutonium contained in the warheads to be extracted. Thus, over a 10-month period since the Statement was signed, Ukraine received 100 tons of nuclear fuel in exchange for 200 warheads transferred to Russia.

The Trilateral Statement was a trade-off and of no legal binding, but actual steps taken to implement it helped the administrative authorities convince the parliament that further steps were needed to progress towards nuclear disarmament.

On February 3, 1994, the Supreme Council of Ukraine withdrew the provisos to the Resolution on Ratification of START-1 dated November 18, 1993 with regard to the Lisbon Protocol Article V requiring Ukraine's accession to the NPT in the shortest time possible.

The history-making decision by the Supreme Council of Ukraine to accede to the NPT as a non-nuclear-weapon state was made in a time-pressed situation on the eve of the OSCE Budapest Summit and a few months before the New-York Conference that was to decide the NPT's fate.

As this issue was under discussion at the Supreme Council on November 16, 1994, the newly-elected President of Ukraine Leonid Kuchma substantiated the need to accede to the NPT as a non-nuclear-weapon state, arguing that Ukraine was failing to control the nuclear weapons stationed within its territory while it would take \$160-200 billion and a 10-year timeframe to create a domestic closed nuclear production cycle, also pointing to the lack of test ranges. In addition, he emphasized that Ukraine's refusal to accede to the NPT would actually imperil the nuclear non-proliferation regime for it would question the prospects of this Treaty to be extended at the New-York Conference in spring 1995, time of the 25th anniversary of the Treaty's entry into force in 1970. That was ill-boding international isolation for Ukraine.

On November 16, 1994, the Supreme Council of Ukraine adopted the

Law of Ukraine On Accession of Ukraine to the Treaty on the Nonproliferation of Nuclear Weapons Dated July 1, 1968. (The vote was 301 to 8 with 20 abstentions.) Ukraine was acceding to the NPT as a non-nuclear-weapon state. The reservations to Ukraine's accession to the Treaty included item 4 as a point of primary importance, stating that any resorting to force or the threat of force against Ukraine's territorial integrity, inviolability of borders, or political independence by a nuclear-weapon state, as well as applying economic pressure, would be regarded by Ukraine as "an extraordinary event that has jeopardized Ukraine's supreme interest". The wording of this reservation alluded to the NPT Article X, specifying the terms for member states' withdrawal from the Treaty.

On December 5, 1994, during the OSCE summit in Budapest, ratification instruments of Ukraine's accession to the NPT were delivered to the depositary states – Great Britain, Russian Federation, and United States of America; and the Budapest Memorandum was signed. The Memorandum signed by the depositary states to the NPT extended security assurances to Ukraine, Belarus, and Kazakhstan. The Memorandum essentially re-affirmed those states' obligations under the NPT, applicable UN Security Council resolutions and UN Charter, and the 1975 Helsinki Final Act. France and the Republic of China provided Ukraine with identical security assurances in separate documents.

Though being documents of no legal binding, they nonetheless were an important political declaration made by nuclear-weapon states, stating their intent to respect the sovereignty and territorial integrity of states that had

voluntarily rid themselves of nuclear weapons. Ukraine had managed to improve its standing worldwide and gain substantial political assets, which have, unfortunately enough, failed to be capitalized upon to the fullest extent in the years to follow.

Another after-effect of Ukraine's accession to the NPT was the entry into force of the START-1 Treaty, which the Russian Federation parliament had ratified with a proviso that it would have entered into force in the Russian Federation only upon Ukraine's accession to the NPT. Thus, an essential step towards reductions of nuclear weapons was made possible.

In June 1996, the last nuclear warheads left Ukrainian territory for Russia. The elimination process for silo-based launch facilities took another two years. In 2000, Ukraine transferred the last strategic bombers to Russia in payment for outstanding Ukrainian debts at \$25 million per unit.

Ukrainian Sacrifice Offered in Vain?

Ukraine's contribution to maintaining the non-proliferation regime based on the Treaty on the Non-Proliferation of Nuclear Weapons can hardly go overestimated. Ukraine's renouncement of nuclear weapons made it possible to retain the NPT and extend it. Unfortunately, the decision has not been duly appreciated by the world community.

The Ukrainian example of a shift from being part of a nuclear superpower to a non-nuclear-weapon state may be considered a model one. Since amongst other Republics of the former Soviet Union Ukraine had had a chance second only to Russia to retain the portion of the nuclear arsenal left within its territory, its vote for non-nuclear status

played the key role in overcoming the predicament caused by the collapse of the Soviet Union. Ukraine addressed the wishes of the U.S. and other nuclear-weapon states and conceded to nuclear disarmament in exchange for assistance in implementing this decision and security assurances of no legal binding. This step opened opportunities for the continuation of the NPT and was to help strengthen the nuclear non-proliferation regime. The events that followed, however, especially India's and Pakistani nuclear tests in 1998, rather weakened the nonproliferation regime instead. Ukraine and its security are apparently not on the priority list for the U.S. and the European Union states. What lessons then should other countries learn from the Ukrainian experience, as they possibly face the challenge of opting for a status with respect to nuclear weapons in the future? They are likely to draw their conclusions based on specific circumstances, but will, no doubt, address the Ukrainian experience.

Has Ukraine obtained all it has been striving for and rightfully relied on obtaining? By all means, no. In lieu of legally binding security guarantees, it received assurances from nuclear-weapon states, which mainly echoed the relevant provisions of the NPT, UN Charter, and UN Security Council resolutions. The process entailed an encounter of the young Ukrainian state with the tough wrestling rules in the world arena. Ukraine was taught a lesson of "real politique", the rule of interests

was demonstrated to Ukraine, showing that it was the power of states or their groups that determined their standing worldwide.

Ukraine's nuclear disarmament resulted in an actual exit from the strategic space common with Russia. Meantime, Ukraine found itself in a potentially vulnerable situation between two poles of power, its security largely depending on the nature of relations maintained by the region's key players – U.S., EU, and Russia – among themselves and with Ukraine.

The Memorandum though being a document of no legal binding, its political significance should by no means be underestimated. Ukraine's nuclear disarmament facilitated its entry into the world community. Once the nuclear weapons within its territory had been dismantled, Ukraine gained sizeable political assets worldwide. Yet, for various objective and subjective reasons, Ukraine has failed to effectively capitalize on these assets – taking advantage of them as a factor of streamlining economic and political reform to facilitate its integration with the world community.

Ukraine's renouncement of nuclear weapons proved to be a critical step that has eliminated the threat to continued existence of the NPT – the basis of the nuclear weapons nonproliferation regime, helped strengthen security and stability worldwide. Despite all inherent problems, this act will make history and secure for our country a fitting place therein.

State Export Control as a Mechanism for Nuclear Nonproliferation Treaty Implementation



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The Ukrainian Soviet Socialist Republic being part of the USSR enjoyed the world's third largest nuclear weapons potential and maintained a developed nuclear infrastructure albeit adapted to meet the needs of the Soviet Union. In the aftermath of the break-up of the USSR Ukraine's legacy of nuclear facilities included:

- Five nuclear power plants with 15 reactors (10 WWER-1000, 2 WWER-440, 3 RBMK-1000) with a total nominal capacity of 13.600 MWt;
- Three uranium mines and ore-mining and processing facilities;
- Two research reactors (in Kyiv and Sevastopol);

Six special-purpose facilities of the Radon Association responsible for storage of radioactive waste generated by the medical, agricultural, industrial, and research use of radioactive sources.

During the 26 June, 1992 Minsk Summit of CIS Leaders, eight states (Armenia, Belarus, Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Uzbekistan, and

Ukraine) signed two agreements: on basic cooperation principles for peaceful uses of nuclear energy and on export control effort coordination (1).

According to NPT Article III, each non-nuclear-weapon State Party to the Treaty undertakes to accept safeguards, as set forth in an agreement to be negotiated and concluded with the International Atomic Energy Agency in accordance with the Statute of the International Atomic Energy Agency and the Agency's safeguards system, for the exclusive purpose of verification of the fulfillment of its obligations assumed under this Treaty with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices. The safeguards shall be applied to all source or special fissionable material whether it is being produced, processed or used in all peaceful nuclear activities within the territory of such State, under its juris-

dition, or carried out under its control anywhere.

Each State Party to the Treaty undertakes not to provide source or special fissionable material, or equipment or material specially designed or prepared for the processing, use or production of special fissionable material, to any non-nuclear-weapon State for peaceful purposes, unless the source or special fissionable material shall be subject to the safeguards required by this article.

It is the NPT Article III i.2 provisions that are believed to be the bedrock to build an international system of nuclear weapons export controls upon it.

The said safeguards shall not hamper the economic or technological development of the Parties or international cooperation in the field of peaceful nuclear activities.

In accordance with other Treaty Articles, all the Parties to the Treaty undertake:

- To facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy;

- To pursue negotiations on effective measures relating to cessation of the nuclear arms race and on a Treaty on general and complete disarmament under strict and effective international control.

- The Treaty underpins the inalienable right of all Parties to the Treaty to develop research, production, and use of nuclear energy for peaceful purposes without any discrimination.

On 16 November, 1994, the Supreme Council of Ukraine adopted a

decision to accede to the NPT and on 5 December, 1994 the documents on Ukraine's accession to the NPT were handed by President Leonid Kuchma to the heads of NPT Depository Governments. Undoubtedly, this decision of Ukraine's was a notable contribution to the strengthening of the international nuclear nonproliferation regime.

The signing of the IAEA/Ukraine Agreement for the Application of Safeguards to All Nuclear Material in All Peaceful Nuclear Activities of Ukraine at IAEA's General Conference 38th Session in September 1994 (effective 1 January, 1995) was another proof of Ukraine's consistent nuclear weapons nonproliferation policy. Complying with Agreement provisions, Ukraine drafted and submitted to the Agency an initial report on all nuclear material subject to safeguards. Following the December 1994 accession to the NPT as a nonnuclear-weapon state, Ukraine signed an Agreement with IAEA for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons in September 1995 (ratified 17.12.97), a successor to the previous Agreement.

Since 01 June, 1996, upon completion of the process of nuclear weapons removal from Ukrainian territory, Ukraine has been a nonnuclear-weapon state both de jure and de facto.

Export control system and nuclear non-proliferation challenges

NPT Article III i.2 provisions for undertaking not to provide source or special fissionable material, or equipment

or material specially designed or prepared for the processing, use or production of special fissionable material; and later the IAEA Agreement Protocol Additional Article 2.A.IX challenged

nuclear suppliers to settle on a list of materials and equipment along with conditions and procedures for their export control and regulation, i.e. actually provided the basis for national export control systems to be established in those states.

To put in place those and other arrangements between NPT member experts, the Zangger Committee (ZC) was instituted in 1971 (named after its first chairman Claude Zangger). The Committee was first to develop, in the NPT Article III i.2 context, international transfer guidelines for nuclear export goods and the associated trigger list. That Trigger List later formed the basis for Part I of the Nuclear Suppliers Group's Control Lists. As it turned out, ZC's recommendations had some inherent shortcomings; in particular, they only covered supplies of material and equipment specially designed for nuclear activities, while dual-use goods were exported without any safeguards. The Trigger List left out such items as heavy water production, uranium enrichment, and nuclear waste processing equipment believed to be critical to the nonproliferation of nuclear weapons. Therefore, it called for another international institution to be established, namely the Nuclear Suppliers Group (NSG).

In 1975, the Nuclear Suppliers Group, a non-governmental international organization (regime) under the IAEA auspices was instituted to unite a group

of nuclear supplier countries which sought to contribute to the nonproliferation of nuclear weapons through the implementation of two guideline packages for nuclear and nuclear-related exports. Those Guidelines were published as Part I and Part II of the INFCIRC/254 document. As of today, the regime is comprised of 44 states including all the world's exporters of nuclear material, equipment, and technologies. Ukraine joined in the NSG in April 1996.

The NSG Guidelines establish a number of rules and procedures for export/import of goods that are involved in nuclear activities and can be used in the production of nuclear weapons.

In accordance with the Guidelines, suppliers should not authorize transfers of equipment, materials, software, or related technology:

- For planned use in a nonnuclear-weapon state in a nuclear explosive activity or an IAEA-unsafeguarded nuclear fuel-cycle activity, or
- When there is an unacceptable risk of diversion to such an activity, or when the transfers are contrary to the objective of averting the proliferation of nuclear weapons.

The Guidelines seek to ensure that nuclear trade for peaceful purposes does not contribute to the proliferation of nuclear weapons or other nuclear explosive devices.

One of key functional elements of the NSG regime, and of virtually all other regimes alike, is the requirement for each participating state of timely reporting to other participating states its international transfer denials for trigger-listed goods, to be followed by

concerted action on the part of all NSG participants to preclude the denied transfers.

The critical factor of NSG performance is transparency in maintaining dialogue and information exchange on programmes hazardous in terms of nuclear weapon production as pursued by certain countries, and on possibilities of diversion of export items to unauthorized use, and on channels and ways of purchasing nuclear material, etc.

NSG members' commitment to complying with the strict supply terms in the context of further development of nuclear energy peaceful uses render the NSG a core element of the international nuclear nonproliferation regime.

National export controls

National independence gained, the Ukrainian Government faced a challenging task of prompt and adequate implementation of effective state controls over international transfers (export, import, transit) of conventional arms and goods sensitive in terms of proliferation of weapons of mass destruction and their delivery means.

Ukraine's ratification of the Treaty on the Nonproliferation of Nuclear Weapons, signing of the Memorandum of Understanding between Ukraine and U.S. on Missile Equipment and Technology Transfer, signing of Ukraine/IAEA cooperation documents, signing of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction and related Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biologi-

cal) and Toxin Weapons and on their Destruction, and Ukraine's accession to international export control regimes (Nuclear Suppliers Group, Zangger Committee, Wassenaar Arrangement) provided an impetus to further improvement of the state export control system (2).

Proceeding from non-proliferation principles, Ukraine established, through Cabinet of Ministers of Ukraine Resolution No. 563 dated 27 July, 1995, export controls over international transfers of goods that can be used in the production of WMD missile delivery means, albeit its Missile Technology Control Regime (MTCR) membership started as late as 1998.

It was Ukraine's accession to the NPT that created favourable conditions for state export control system development. This is solidly evidenced by the fact that since Ukraine had acquired full membership of the Nuclear Suppliers Group and Zangger Committee in 1996; key steps had been made for Ukraine to participate in other export control regimes.

Thus in July 1996, Ukraine became a member state of the international export control regime known as the Wassenaar Arrangement. This regime implemented controls over conventional weapons and related dual-use goods. Basic control principles and related control lists under this regime were codified in the national legislation by respective Cabinet of Ministers of Ukraine Resolutions No. № 1358 dated 8 December, 1997 and No. 1005 dated 22 August, 1996.

In April 1997, Cabinet of Ministers of Ukraine Resolution No. 384 dated

22 April 1997 established export controls over international transfers of goods that can be used in the production of chemical, bacteriological (biological), and toxin weapons despite no full membership of the Australia Group international regime acquired by Ukraine as yet.

To date, Ukraine's non-proliferation effort has actually completed the formation of both legal and regulatory basis for an export control system in Ukraine.

The legal basis for an export control system in Ukraine is represented by the Law of Ukraine On State Control over International Transfers of Military Goods and Dual-Use Goods, other laws of Ukraine, President of Ukraine edicts and Cabinet of Ministers of Ukraine resolutions.

State policy in the area of state export control is developed based on the following main principles:

- Priority given to Ukraine's national interests – political, economic, and military, whose upholding is critical to national security;

- Mandatory fulfillment of Ukraine's international commitments on non-proliferation of weapons of mass destruction and their delivery means, establishment of state control over international transfers of military and dual-use goods as well as implementation of measures to prevent the said goods being used to terrorist and other unlawful ends;

- Legality;

- Exercising export control only to the extent necessary for accomplishment of its goals;

- Conformity of state export control procedures and rules with international law norms and practice;

- Interaction with international organizations and foreign countries in the area of state export controls to strengthen international security and stability and to prevent proliferation of weapons of mass destruction and their delivery means.

The state export control system is applied only to the extent necessary for accomplishment of its goals. State export control procedures and rules applied by Ukraine are consistent with international legal norms and practices due to continuous interaction with international organizations and foreign countries in the area of state export controls to strengthen international security and stability as well as to prevent proliferation of weapons of mass destruction and their delivery means.

To uphold national security interests and to comply with international commitments made, Ukraine maintains strengthened control over international transfers and subsequent use of goods that can be used in the production of weapons of mass destruction including chemical, bacteriological (biological), and toxin weapons and their missile delivery means. Putting such controls in place is a key element of the national nonproliferation policy.

In accordance with the Provision on the State Service of Export Control of Ukraine (SSEC) enacted by President of Ukraine Edict No. 342 dated 17 April, 2002, this Service is a duly authorized state export control body of administrative authority to implement the state export control policy, manage activities in this area, and conduct interagency coordination and functional regulation of matters within its scope of competence.

In reviewing licensing submittals for international goods transfers including nuclear-related goods, the SSEC liaises with Ukrainian ministries and agencies such as the Ministry of Foreign Affairs, Ministry of Defense, Ministry of Economy and European Integration, Ministry of Industrial Policy, State Nuclear Regulatory Committee, National Space Agency, Security Service, State Customs Service, and leading Ukrainian industrial and scientific institutions; namely, national nuclear laboratories: National Scientific Center of Kharkiv Physical-Technical Institute and Kyiv Institute for Nuclear Research of the National Academy of Sciences of Ukraine (3).

The underlying basis for barring proliferation is represented by appropriate provisions of the Law of Ukraine On State Control over International Transfers of Military Goods and Dual-Use Goods with Articles 6 and 17 prohibiting not only the granting of export licenses, but also the entry into contracts in the event that it contravenes Ukraine's national interests, international commitments, counter-terrorist objectives, and whenever there is a plausible reason to refer the goods in question to weapons of mass destruction or those designed to produce such weapons or their delivery means.

That automatically precludes export of weapons of mass destruction including nuclear ones, which is consistent with the Nuclear Non-proliferation Treaty requirements.

Over the last two years the Cabinet of Ministers of Ukraine has approved updated national lists of export control goods and related Procedures for state export control of these go-

ods. These lists are harmonized with the international export control regime trigger lists, specifically, the List of Dual-Use Goods that Can be Used in the Production of Nuclear Weapons (Appendix 3 to Procedure for State Control over International Transfers of Dual-Use Goods enacted by Cabinet of Ministers of Ukraine Resolution No.86 dated 28 January 2004) is harmonized with the Nuclear Suppliers Control List.

A mandatory nuclear export condition is for a foreign end user to make commitments and provide assurances as appropriate in the form of an end-user certificate, import certificate, or any other document containing:

- Data on the end-user and exporter of the goods in question, their designation and quantity, final destination and end-use location;
- Undertaking by a foreign end user not to reexport or transfer the goods received or assurance that the goods are intended to meet the end-user's own needs not related to their reexport or transfer.

Along with other commitments; specifically, with respect to goods that can be used in the production of nuclear weapons, obligations shall be assumed as follows:

- Assurance of using the goods received for declared purposes with no relation whatsoever to the production of nuclear explosive devices or activities, or IAEA-unsafeguarded nuclear fuel cycle activities;
- Undertaking not to replicate, modify, or reexport the goods received, or retransfer them to a third party or assurance that the goods are intended to meet the end-user's own needs

not related to their subsequent modification, reexport or retransfer.

For export, interim export, and reexport of goods listed in Part I of the List of Dual-Use Goods that Can Be Used in the Production of Nuclear Weapons, in addition to the above commitments and assurances, a document shall be submitted as issued or authenticated by the recipient state's duly authorized agency, containing confirmation or assurance by this agency that the goods received and nuclear and special non-nuclear materials, facilities, and equipment fabricated on their basis or as a result of their use:

- Will not be used in the production of nuclear weapons or other nuclear explosive devices, or to a military end;
- Will be safeguarded by the IAEA throughout their actual use, in accordance with the Safeguards Agreement between IAEA and the recipient state, covering all peaceful activities of that state;
- Will be secured by physical protection means at a no lesser level than IAEA-recommended;
- Will not be reexported or retransferred from the importer state's jurisdiction to any other state unless the above-listed conditions are met and a written permit by the exporter and Ukraine's export control authorities is available.

Owing to the licensing mechanism established for international transfers of nuclear and other goods, declared end-use control, and other measures; Ukraine's export control system is now up to the international level. It does allow controlling international transfers of source or special fissionable material and equipment or material specially designed or prepared for the processing, use or production of special fissionable material as stipulated by the Treaty on the Nonproliferation of Nuclear Weapons.

References:

1. Nonproliferation of Nuclear Weapons, Collected Papers, Moscow, "International Relations", 1993
2. Hryshutkin O.M. International Aspects of Export Control, Export Control in Ukraine, Collection in two volumes under general editorship of O. Legeyda, Kyiv, 2003
3. Hryshutkin O.M. Ukrainian Export Control System Organization as a Component of the National Security System, Digest of the international conference Implementation Status of Nuclear Export Control and Export Control-Related Internal Compliance System, Kyiv, 16–17 May, 2001

A Decade of Ukraine's Accession to the Treaty on the Nonproliferation of Nuclear Weapons: Legal Aspects



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The break-up of the Union of Soviet Socialist Republics in 1991 represented a unique event in the history of international relations. The international community faced a new, previously unknown problem; it was for the first time ever that a great nuclear power was disintegrating.

Independence gained, Ukraine decided to consistently progress towards non-nuclear status. On November 16, 1994, the Supreme Council of Ukraine ratified the Treaty on the Nonproliferation of Nuclear Weapons (NPT).

The basis for accession to the NPT had been laid down in the Declaration on State Sovereignty of Ukraine dated July 16, 1990; the Supreme Council of Ukraine statement On Non-Nuclear Status of Ukraine dated October 24, 1991; the Supreme Council of Ukraine Resolution On Supplementary Measures to Secure the Non-Nuclear Status of Ukraine

dated April 9, 1992; the Supreme Council of Ukraine Resolution On Ratification of the Treaty between the United States of America and the Union of Soviet Socialist Republics on the Reduction and Limitation of Strategic Offensive Arms (START I) Signed in Moscow on July 31, 1991 and Protocol Thereto Signed in Lisbon on Behalf of Ukraine on May 23, 1992 dated November 18, 1993 ; and the Trilateral Statement by Presidents of Russia, Ukraine and U.S. signed in January 1994, wherein Ukraine undertook to remove all nuclear munitions from its territory within seven years of the effective date of the START-1 Treaty. The Trilateral Statement read that the President of Ukraine had confirmed his commitment that Ukraine would accede to the Treaty on the Nonproliferation of Nuclear Weapons as a non-nuclear-weapon state in the shortest possible time. The three Presi-

¹ The U.S./USSR Treaty on the Reduction and Limitation of Strategic Offensive Arms was signed on July 31, 1991. The Lisbon Protocol signed on May 23, 1992 transformed the Treaty into a pentilateral document with Belarus, Kazakhstan, Russia, Ukraine, and U.S. being parties thereto.

dents made a decision on simultaneous action to withdraw nuclear munitions and supply fuel assemblies for nuclear power plants as compensation.

Ukraine put forward a condition requiring security guarantees from nuclear-weapon states.

Therefore, Ukraine acceded to the Treaty on the Non-Proliferation of Nuclear Weapons with reservations as follows:

1. The Treaty provisions fail to cover to the fullest extent the unique situation that developed in the aftermath of the break-up of the nuclear power USSR.

2. Ukraine owns nuclear weapons inherited from the former USSR. Upon deconstruction and destruction of these weapons under Ukraine's control and in compliance with procedures ruling out the possibility of nuclear materials as components of these weapons being reused for their original purpose, Ukraine intends to use the above-said materials for peaceful purposes only.

3. The presence of nuclear weapons within the territory of Ukraine until their complete elimination along with activities as appropriate for their maintenance and disposition do not contravene the Treaty Article I and II provisions.

4. Any resorting to force or the threat of force against Ukraine's territorial integrity, inviolability of borders, or political independence by a nuclear-weapon state, as well as applying economic pressure to compromise Ukraine's sovereign rights for the benefit of their own interests, will be regarded by Ukraine as extraordinary events that have jeopardized its supreme interest.

Russia, U.S. and Great Britain extended security assurances to Ukraine in a memorandum made public at the 5 December 1994 meeting of the Organization on Security and Cooperation in Europe. France and China provided their guarantees to Ukraine in separate documents.

Ukraine's accession to NPT as a non-nuclear state enabled enforcement of the START-1 Treaty. From then onward, Ukraine has strictly complied with the obligations under the Trilateral Statement and the START-1 Treaty along with the Lisbon Protocol.

Over the recent years, major international measures have been implemented both to improve nuclear facility-specific safety worldwide and to implement more effective safety recommendations and norms. The IAEA has instituted a Physical Protection Advisory Service, responsible, as requested by member states, for independent reviews by international experts of physical protection systems against the state-of-the-art requirements.

With regard to international norms, the unique agreement in this area as of today is the Convention on the Physical Protection of Nuclear Material, which was opened for signature on March 3, 1980 and entered into force on February 8, 1987. The Supreme Council of Ukraine passed a resolution on May 3, 1993, requiring Ukraine's participation in this Convention.

The Convention on the Physical Protection of Nuclear Material establishes legal norms for protection of nuclear material being in the process of international transfer against criminal assaults both at national and international levels. It obligates the members to strictly comply with the international legal regime that allows for concerted effort to return stolen material, extradition of and criminal proceedings against persons responsible, and also regulates related cooperation between states.

The Convention has a number of essential shortcomings. It is not applicable to nuclear material being used, stored, and transported internally. Additional requirements for protection against subversive assaults on nuclear facilities are missing. Besides, the Convention require-

ments are of general nature. No verification mechanisms, not even voluntary reports, and no independent authoritative review of physical protection practices are envisaged. Such measures could imbue the international community with confidence that states do adequately protect their nuclear material and facilities.

Cognizant of this situation, on October 19, 2000 the Supreme Council of Ukraine passed the Law Ukraine On Physical Protection of Nuclear Facilities, Nuclear Material, Radioactive Waste, and Other Radioactive Sources, further developing the provisions of Section XI Physical Protection of Nuclear Material and Nuclear Facilities of Ukraine's fundamental nuclear Law On the Use of Nuclear Energy and Radiation Safety.

The Law of Ukraine On Physical Protection of Nuclear Facilities, Nuclear Material, Radioactive Waste, and Other Radioactive Sources is meant to protect national security interests, strengthen the nuclear weapon non-proliferation regime, prevent and stop acts of nuclear terrorism, theft or any other illegal removal of nuclear material, radioactive waste or other radioactive sources. Although this Law is believed by experts to be imperfect because many of its provisions are of declarative and not specific nature, yet it is a substantial step forward in improving the national regulatory basis for physical protection of nuclear material and facilities.

According to Article III of the Treaty on the Non-proliferation of Nuclear Weapons, each non-nuclear-weapon member state shall enter into a Safeguards Agreement with the International Atomic Energy Agency. On September 21, 1995 Ukraine signed such an agreement with the IAEA and on 17 December 1997 it was ratified by the Supreme Council of Ukraine.

There is a state safeguards system in place to ensure the safety of such mate-

rial. The system comprises a set of technical and administrative measures and is applicable to all nuclear material used for peaceful purposes within the territory of Ukraine, under its jurisdiction, or under its control.

The objective of the safeguards system is to preclude using "peaceful" nuclear material, equipment, and technology to military ends. The state safeguards system is based on the Treaty on the Non-proliferation of Nuclear Weapons, The Agreement between Ukraine and the Agency for the Application of Safeguards in Connection with the NPT and other treaties to which Ukraine is a party, and the Law of Ukraine On the Use of Nuclear Energy and Radiation Safety (Article 67 of the Law) and includes a state nuclear material accountancy and control system (SNMAC) and state system for nuclear material, equipment, and technology export/import control.

The December 17, 1997 ratification by the Supreme Council of Ukraine of the Agreement between Ukraine and the Agency for the Application of Safeguards to All Nuclear Material in All Peaceful Nuclear Activities of Ukraine continued to form the regulatory basis for ensuring that nuclear energy will not be used to military ends. A similar agreement becomes effective immediately upon receipt by the Agency of the state's official notice of completed implementation of the procedures required. The Agreement defines the scientific and technical scope of the IAEA's practical activities, as stipulated in the Nuclear Nonproliferation Treaty Article III.1. The principal safeguards implementation tasks and procedures are identified, including the starting point and termination of control, exemption from safeguards, documenting the Agency's controlling activities. Specific safeguards application procedures and methods are laid down, including the procedure for using

national nuclear material accountancy and control systems, procedure for and scope of IAEA inspections. International transfers of IAEA-safeguarded nuclear material are regulated.

In response to clandestine nuclear weapon activities in Iraq, which is a party to the NPT, detected in 1991, the IAEA took effective action to improve certain safeguards system elements. During 1991-1993 the IAEA Board of Governors re-affirmed the Agency's right to conduct ad-hoc inspections in the event that the information provided by a member state is insufficient. In 1993 the Board of Governors adopted a programme with specific concern as to safeguards system improvement. The programme was entitled Programme 93+2. As this programme was developed, further measures to strengthen the safeguards system were worked out. The implementation of such measures needed to be codified. Therefore, in 1997 the IAEA Board of Governors approved a brief Model Protocol to the Safeguards Agreement entitling the IAEA ampler rights of access to information and locations likely to be controlled.

The Protocol Additional entitles the IAEA inspectors to obtain additional information regarding the following:

- Nuclear fuel cycle-related research and development activities;
- Operational activities at facilities and locations outside facilities where nuclear material is used, and additional access to:
 - Any site, facility, or location where nuclear material was customarily used.
 - Records taken prior to enforcement of the Safeguards Agreement to provide credible assurance that all material is declared.

According to the Protocol Additional, the IAEA is entitled to use state-of-the-art operator-free equipment and transmit nuclear material-related information to the в IAEA Headquarters.

In addition, The Protocol Additional includes an "Amplified Declaration" on providing:

- Information related to nuclear fuel cycle activities. It will allow the IAEA to have a better understanding of the objectives of the state's nuclear programme, possible paths for development of that programme, based on capabilities provided within the programme's infrastructure;
- Access to any location at a nuclear site, any decommissioned facility, any other location where nuclear material is stationed;
- Access to works involving nuclear activities and other locations identified by the state in its amplified declaration, as well as locations identified by the IAEA;
- Right to take environmental samplings and other measures at those sites.

As of September 2004, the Protocol Additional had been signed by 86 countries of the world and ratified by 61 countries.

Since increasingly more countries of the world are adopting the new safeguards regime, Ukraine, as a state of large-scale nuclear activities, cannot stay aside of this process.

The Protocol Additional was signed on August 15, 2000 on behalf of Ukraine by the Resident Representative of Ukraine to the International Organizations in Vienna in compliance with the President of Ukraine № 163/2000-rp dated April 14, 2000.

On July 30, 2004; the President of Ukraine, as a legislative initiator, submitted to the Supreme Council of Ukraine the draft Law of Ukraine On Ratification of The Agreement between Ukraine and the Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons.

Ukraine's support of the new safeguards regime will be indicative of our country's consistent peaceful policy.

Denuclearization and Ukraine: Lessons for the Future



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In April-May 1995 in New York States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) gathered to take part in the NPT Review and Extension Conference.

Concluded back in 1968, the NPT has become a cornerstone of the nuclear weapons non-proliferation regime. For many years it has played important role in the maintenance of the global security and stability. That is why primary goals of the mentioned Conference were enhancing the Treaty's efficacy and providing its indefinite extension.

After tough debates Conference delegates succeeded in producing a package decision, the central being that the Treaty shall continue in force indefinitely.

Ukraine was represented among 175 delegations that took part in the NPT Review and Extension Conference. It is worth mentioning in this connection that Ukraine acceding to the NPT as a non-nuclear weapon state on

the eve of the Conference contributed considerably to its successful outcome.

The anatomy of the Ukrainian decision to voluntarily give up nuclear weapons on its territory is intricate and in many ways unique as it was directly related to the break-up of a nuclear weapon state—an event without a precedent in world practice.

The first document that defined Ukrainian policy with regard to nuclear weapons was the Declaration on the State Sovereignty (adopted on July 16, 1990), which laid out Ukraine's intention to abide by the three non-nuclear principles originally set forth in the NPT—not to receive, manufacture, or acquire nuclear weapons. Subsequently this intention was reaffirmed by the Parliament of Ukraine in its statement "On the Non-Nuclear Status of Ukraine" (24 October 1991), which declared Ukraine's plans to accede to the NPT. Curiously enough, when Ukraine was

still a part of the Soviet Union it expressed its adherence to the goals of the NPT and even explored the possibility of acceding to it but at that time those efforts were doomed to failure.

The International Context: U.S. Policy

The policies of the first Bush administration towards Ukraine and the initial approach of the Clinton Administration were plagued by strategic miscalculation about the strategic role of Ukraine in the region. During his visit to Kyiv shortly before the failed August 1991 coup George Bush made it clear that, despite increasing moves toward decentralization in the Soviet Union, the United States preferred to deal with a single Soviet state. This statement produced an adverse effect on U.S.-Ukrainian relations and even impacted on Ukrainian policy regarding nuclear weapons.

After the December 1991 break-up of the Soviet Union, U.S. efforts switched to focus on preserving Russia as the sole inheritor of the Soviet nuclear arsenal, although there was reportedly a short debate over whether Ukraine should retain nuclear weapons and serve as a counterbalance to Russia.

The fate of the Soviet nuclear arsenal deployed on the territory of Ukraine, Belarus and Kazakhstan was viewed exclusively as a proliferation problem. In particular, there was a concern that Ukraine would be the first state to go nuclear in the post-Cold War era world, thus pushing other non-nuclear states (for instance Germany)

to acquire nuclear weapons. From a legal point of view, which was shared by U.S. officials, the basic purpose of the NPT—to limit nuclear weapon states to five—would be defeated if Ukraine or any other former Soviet republic had been permitted to inherit Soviet rights to hold nuclear weapons under this treaty. The conclusion followed that Ukraine, Belarus, and Kazakhstan should join the NPT as non-nuclear weapon states.

Initially, there was no unified stance among the relevant U.S. governmental agencies about how to attain the goal of a Ukraine free of nuclear weapons. The Pentagon tended to construct a comprehensive dialogue with Ukraine that should have resulted in the transfer of nuclear weapons to Russia. The alternative view, which was associated with the State Department, sought to "lock in" Kyiv's denuclearization pledges: only if Ukraine lived up to its commitments to denuclearize would the United States extend political and economic support. The State Department's stance eventually prevailed.

Methods of pressure did not produce the expected results. This was the reason why in Spring 1993 the Clinton administration, that replaced the Bush administration, revised its policy towards Ukraine in favor of a broader dialogue by means of discussing issues that were of top priority to Kyiv (receiving international security assurances, financial and technical assistance for nuclear disarmament purposes, compensation for the value of nuclear weapons components).

The International Context: policy of the Russian Federation

Russian policy towards Ukraine was mostly determined by the absence of readiness among certain decision-makers in Russia to make a political decision with regard to recognizing Ukraine as a fully independent state.

One of the most acute problems of Ukraine-Russia bilateral relations was connected, inter alia, to the issues of providing conditions for transferring nuclear weapons from Ukraine to Russia as well as to preventing Kyiv from taking control over such weapons.

Certain tensions between the two states gave rise to concerns in Ukraine over the state of national security and induced some politicians to believe that nuclear weapons were, possibly, the most reliable deterrence against an unfriendly neighbor. Such a situation spurred intense internal debates about the fate of Ukraine's nuclear weapons.

Security assurances

The issue of security assurances was first raised at the national level by Ukrainian parliamentarians in connection with the withdrawal of tactical nuclear weapons (TNWs) from Ukraine in early 1992. They maintained that since Ukraine was giving up nuclear weapons it was entitled to international security guarantees. This demand was set forth in a resolution adopted by the Ukrainian parliament, "On Additional Measures on Ensuring Ukraine's Acquisition of a Non-Nuclear Status" (9 April 1992).

Almost right after that Ukraine appealed to the international community with the respective request. Noteworthy in this context was the US reaction to Ukraine's appeal. The United States immediately dismissed the possibility of the practical realization of that request. It meant that Washington was reluctant to give Ukraine any guarantees beyond what was already provided by the nuclear weapon states (NWS) to non-nuclear weapon states (NNWS) within the NPT context in 1968, 1978 and 1982. From the U.S. standpoint, more extensive commitments would have elevated Ukraine's status to that of an ally of the United States—something the Bush Administration was willing to avoid—and also pushed other non-nuclear weapon states to put forward similar demands.

As it was noted above, the US changed its stance on the issue of security assurances to Ukraine only later on.

By June 1993 all NWS forwarded to Kyiv draft documents containing the security assurances they were prepared to provide. Basically, those texts reaffirmed the so called "positive" assurances provided by the NWS to the non-nuclear weapon States Parties to the NPT (set forth in UN Security Council Resolution 255 (1968) as well as some basic principles and rules of international law contained in the UN Charter and the 1975 CSCE Final Act. The Russian version of security guarantees was noteworthy for its contents, which had serious shortcomings: provision of security assurances to Ukraine was in fact immediately con-

connected to Ukraine remaining a member of the CIS.

Despite many positive points, these draft documents on security assurances did not fully meet Ukraine's expectations. Kyiv's initiative as to concluding a legally binding instrument on security assurances met resistance from the NWS as they saw such a document as an alliance type arrangement which they were not prepared to extend. In addition, there was also disagreement on the timing of assurances. Ukraine insisted that they be provided before its accession to START I and the NPT; the NWS dismissed this idea since they regarded provision of security assurances as a bargaining chip to induce Kyiv to ratify the treaties.

During the OSCE summit in Budapest on 5 December 1994 Heads of State and Government of Ukraine, the US, Russian Federation and the Great Britain signed the Memorandum on Security Assurances in Connection with Ukraine's Accession to the NPT. This document was signed simultaneously with Ukraine depositing its instruments of ratification of START I and accession to the NPT. On that very day security assurances were unilaterally extended to Ukraine by China and France.

The Memorandum on security assurances was not legally binding but the scope of assurances provided in general met Ukraine's key requirements. The value of the Memorandum provisions also lay in the fact that Ukraine was an immediate beneficiary of the security. Finally, the signature of the document set a precedent in the world practice when the NWS eventually agreed to provide security

assurances in turn for the pledge to denuclearize.

START I and the Lisbon protocol

The demise of the Soviet Union triggered worries about the further fate of the START I Treaty, which had been negotiated by the US and the Soviet Union since 1982. These circumstances brought about the whole array of issues as to, in particular, who was to be considered a successor to the rights and obligations of the USSR under START I and how the treaty could be ratified and implemented. No doubts, Ukraine along with Belarus and Kazakhstan had to participate in the implementation of the Treaty. On the other hand, conferring the rights and obligations under START I on those states could be construed as an implicit recognition of their nuclear status, which was unacceptable for both Russia and the United States. These considerations were behind the message of Thomas Niles, U.S. Assistant Secretary of State for European and Canadian Affairs, who came to Kyiv in early December 1991 and argued against Ukraine's ratification of START I as a full-fledged party. At the same time, the United States sought to obtain from Ukraine some legally binding assurances that it would implement START I provisions to the extent that they applied to the Ukrainian territory.

Finding the appropriate formula for ratification of START I proved to be a challenging task. In October 1991, Ukraine declared its intention to abide by START I provisions as far as nuclear weapons stationed on its territory

were concerned. As one of the successor states to the former Soviet Union it insisted on the status of an equal party to START I, while Russia argued that it was the sole successor to the Soviet Union and thus START I was to remain a bilateral treaty. In April 1992 Ukraine proposed that, instead of being represented by Russia, all four states (Russia, Ukraine, Belarus, and Kazakhstan) act as one collective party to preserve START I's bilateral nature. While the proposal was backed by Belarus, Russia resisted it. The United States, after a while, supported the Ukrainian proposal too. The U.S. concession to Ukraine with regard to the START I ratification formula led Russia to suspect that the real reason behind that change in position was to put pressure on Russia to force it into concessions at the START II negotiations (U.S. officials denied any such linkage).

On May 23, 1992 Ukraine, Belarus, Kazakhstan, Russia and the U.S. signed the Lisbon Protocol under which all four former Soviet republics assumed the obligations of the USSR under START I. Under Article V of the Protocol the three states but for Russia committed themselves to accede to the NPT in the shortest possible time as non-nuclear weapon states.

The signing of the Lisbon protocol became an important landmark event in the sense that it provided a solution to an extremely complicated legal and political problem. Provisions of the Lisbon protocol paved the way to the practical implementation of START I.

In hindsight it is obvious that the Lisbon protocol was a major achievement,

although each of the signatory states had its own evaluation of the protocol. From Ukraine's perspective, the Lisbon protocol was an unquestioned success, as it acknowledged Ukraine's status as a state successor to the former Soviet Union and embodied Ukraine's original position with respect to equal participation in START I.

START I Ratification

After START I Treaty had been ratified by the four parties out of the five that had concluded the Lisbon Protocol, Ukraine faced pressure from all sides. It remained the only holdout from the treaty, a situation that alarmed the West. Ratification of such a comprehensive and crucial treaty as START I was not an easy task for the Ukrainian parliament, which needed to carefully consider possible implications for national security and the overall process of building Ukrainian statehood. This analysis was entrusted to the National Committee on Disarmament and an ad-hoc parliamentary commission.

Taking into account the results of negotiations with the US and Russia on the issues that were of particular importance to Ukraine the parliament of Ukraine ratified START I on November 18, 1993. In itself, the ratification marked some progress toward the denuclearization of Ukraine. Nevertheless, the resolution of ratification contained thirteen reservations and made entry of START I into force conditional on the fulfillment of six major points.

The resolution of ratification received a hostile reception in the West and Russia. Probably the most striking to the American and Russian leadership was

¹ The National Committee on Disarmament was set up under the Presidential decree of December 10, 1992 and disbanded on September 9, 2002.

the resolution's declaration that Ukraine was the owner of the nuclear weapons stationed on its territory and was not bound by Article V of the Lisbon protocol. Such a declaration spurred harsh criticism by American and Russian politicians who accused Kyiv of going back on its pledge to become a non-nuclear state and of undermining the global nuclear nonproliferation regime.

Despite all the criticism that followed the November 1993 resolution ratification, it did serve the positive purpose of highlighting the issues that had to be resolved before Ukraine embarked upon START I implementation and acceded to the NPT.

On November 16, 1994 the Parliament of Ukraine adopted the law "On the Accession of Ukraine to the Treaty on the Nonproliferation of Nuclear Weapons." This law was accompanied by a range of reservations. One of them made entry into force by the law conditional upon provision of security assurances to Ukraine in the form of respective legally binding instrument.

It is well known that the legally binding security assurances sought by Ukraine were never provided. However, the politically binding security commitments assumed by the NWS by means of signing of the Memorandum on Security Assurances in Connection with Ukraine's Accession to the NPT became a great achievement in this context.

Conclusions

Ukraine's decision to give up nuclear weapons stands out prominently at least for two reasons. First, Ukraine inherited nuclear weapons in the aftermath of the disintegration of a nuclear weapon state (an event unprec-

edented event in international history) and then voluntarily gave them up. The case of Ukraine may be sometimes underestimated because many analyses point out that South Africa was the first country that ever voluntarily scrapped its nuclear program. But the South African case does not detract from either the significance or the uniqueness of Ukraine's decision, particularly when one considers that the size of South Africa's dismantled nuclear capability was incomparable to that held by Ukraine: seven nuclear devices (one uncompleted) compared to hundreds of weapons that would have comprised the third-largest nuclear arsenal on the planet, larger than those of Great Britain, France and China combined.

Ukraine's accession to the NPT as a non-nuclear weapon state was thus of crucial importance to the future of nuclear non-proliferation and arms control regimes. It paved the way for the implementation of START I. The Ukrainian decision removed additional incentives for other states to pursue nuclear ambitions and enabled the NWS to argue that they were making progress in implementing Article VI of the NPT (disarmament). Their ability to point to progress on this point helped ensure the successful outcome of the 1995 NPT Review and Extension Conference, which endorsed the indefinite extension of the NPT. Of vital importance in this regard, was UN Security Council resolution 984 on security assurances to non-nuclear weapon states, adopted on the eve of the conference. It should be noted that the language of this resolution took into account the framework of negotiations on security assurances for Ukraine.

A Little Bit History...

Ten years ago, Ukraine acceded to the Treaty on the Nonproliferation of Nuclear Weapons, having thereby possibly made one of the most critical international security contributions for a specific state in modern history. That decision reflected the nascent state's candid hankering for peace and international security in the horrifying aftermath of the Chornobyl Disaster, a desire to build on its independence and to assume a proper standing in the world community through a high level of scientific/engineering and economic development and adherence to social humanitarian values rather than by possessing a mighty military (primarily nuclear) potential viewed by a major part of the society as a burdensome legacy of the former USSR's aggressive foreign policy. Undoubtedly, that decision was not made without profound analysis and calculations, yet the dominant social sentiments in the Ukrainian society against a background of strong external pressure seem to have been decisive.

Although the time count of that truly history-making event starts with the adoption by the Supreme Council of Ukraine the Law of Ukraine On Accession of Ukraine to the Treaty on the Nonproliferation of Nuclear Weapons Dated July 1, 1968, it is understood that prior to that final effort a tremendous amount of work had been completed both internationally and nation-wide, therefore, it was decided that in presenting a brief chronological synopsis of the decade it would not be a good idea to ignore the events that had created the necessary prerequisites for that history-making step. That chronology does not assume to be thorough and complete. It is just an attempt to summon up the key events and facts about our state's most critical activities in the context of acceding to the NPT and securing the nuclear weapon nonproliferation regime.

Ukraine in the context of securing nuclear weapon nonproliferation regime and accession to the NPT

Chronology of Events

	1991
24 October	Statement by the Supreme Council of Ukraine <i>On Non-Nuclear Status of Ukraine</i> (1697-12)
	1992
23 May	Ukraine signs <i>Lisbon Protocol to the Treaty between the United States of America and the Union of Soviet Socialist Republics on the Reduction and Limitation of Strategic Offensive Arms Signed in Moscow on July 31, 1991</i>

1993

- 5 May The Supreme Council of Ukraine adopts Resolution No.3182-XII *On Participation of Ukraine in the Convention on the Physical Protection of Nuclear Material*
- 27 July Signed Memorandum of Understanding and Cooperation between the Ministry of Defense of Ukraine and U.S. Department of Defense
- 21 September The Cabinet of Ministers of Ukraine adopts Resolution *On the State Expert-Technical Committee under the Cabinet of Ministers of Ukraine* (No.779) (adoption date is believed to be the birthday of an export control system in our country)
- 25 October Agreement Signed between Ukraine and *the United States of America concerning the provision of assistance to Ukraine in the elimination of strategic nuclear weapons and prevention of proliferation of weapons of mass destruction*
- 18 November The Supreme Council of Ukraine adopts Resolution *On Ratification of the Treaty between the United States of America and the Union of Soviet Socialist Republics on the Reduction and Limitation of Strategic Offensive Arms Signed in Moscow on July 31, 1991 and Protocol Thereto Signed in Lisbon on Behalf of Ukraine on May 23, 1992* (3624-12) dated November 18, 1993
- 5 December Agreement Signed between the Ministry of Defense of Ukraine and U.S. Department of Defense concerning the provision of material, services and related training to Ukraine in connection with the elimination of nuclear arms
- 5 December Agreement Signed between the Expert-Technical Committee under the Cabinet of Ministers of Ukraine and U.S. Department of Defense 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
- 18 December Agreement Signed between the Ministry Defense of Ukraine and U.S. Department of Defense 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 the elimination of strategic nuclear arms
- 18 December Agreement Signed between the State Committee of Ukraine for Nuclear and Radiation Safety and U.S. Department of Defense concerning development of state controls, accountancy and physical protection of nuclear materials to promote the prevention of nuclear weapons proliferation from Ukraine
- 28 December The President of Ukraine issues Edict *On Measures for Physical Protection of Nuclear Material and Nuclear Facilities in Ukraine* (No.608/93)

1994

- 14 January Trilateral Statement by Presidents of Ukraine, Russia and the U.S
- 16 November **The Supreme Council adopts the Law of Ukraine On Accession of Ukraine to the Treaty on the Non-Proliferation of Nuclear Weapons Dated July 1, 1968 (N 248/94-VR)**
- 5 December At the OSCE Budapest Summit, the ratification instruments on Ukraine's accession to the NPT were delivered to the Treaty depositaries, and the Budapest Memorandum was signed

1995

- 8 February Adopted the Law of Ukraine *On the Use of Nuclear Energy and Radiation Safety* No.39.95-BP – generic law in the area of nuclear energy use
- 21 September Agreement Signed between Ukraine and the International Atomic Energy Agency *for the Application of Safeguards in Connection with Treaty on the Non-Proliferation of Nuclear Weapons*
During 1993 – 1995, 1152 nuclear missile units dismantled and dispatched to disposition sites

1996

- 12 March The Cabinet of Ministers of Ukraine adopts Resolution *On Approval of Procedures for Controlling the Export, Import, and Transit of Nuclear Related Goods that Can Be Used to Create Nuclear Weapons* (No.302)
- 18 December The Cabinet of Ministers of Ukraine adopts Resolution *On Approval of the Provision on the State System for Nuclear Material Accountancy and Control* (No.1525)
- April Ukraine joins in the Zangger Committee and Nuclear Suppliers Group
- 28 December According to the President of Ukraine Edict No.1279/96 dated 28.12.1996 *On Further Improving State Export Controls*, the Government Commission on Export Controls was transformed into Government Commission for Export Control Policy; and the Expert-Technical Committee under the Cabinet of Ministers of Ukraine into the State Service of Export Control of Ukraine
- 1996 During the year, 120 nuclear warheads were dispatched to the Russian Federation

1997

- August Ukraine officially notifies the IAEA of its consent to participate in the Agency's database programme to account for incidents of illicit trafficking in nuclear material and other radioactive sources
- 17 December The Supreme Council adopts the Law of Ukraine *On Ratification of The Agreement between Ukraine and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons*.(No.737/97-VR)

2000

- 15 August Ukraine's permanent representative to international organizations in Vienna Mr. V. Ohryzko signs on behalf of Ukraine the Protocol Additional to the *Agreement between Ukraine and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons*
- 8 July The President of Ukraine Edict No.868 establishes the Commission for Policy on Export Control and Military-Technical Cooperation under the President of Ukraine
- 19 October The President of Ukraine signs the Law of Ukraine *On Physical Protection of Nuclear Facilities, Nuclear Material, Radioactive Waste, and Other Radioactive Sources* (No.2064-III)

2001

- 27 December The President of Ukraine Edict No.1265 established the State Service for Export Control of Ukraine as a central executive authority with a special status (The Statute of the State Service for Export Control of Ukraine approved by Presidential Edict No.342 dated 17 April 2002)

2003

- 28 January The Cabinet of Ministers of Ukraine adopts Resolution *On Approval of the Procedures for State Control over International Transfers of Military Goods and Dual-Use Goods* (No.86)
- 20 February Adopted the Law of Ukraine *On State Control over International Transfers of Military Goods and Dual-Use Goods* (No.549-IV)
- 2 June In order to prevent the proliferation of goods that can be used for terrorist purposes, the Cabinet of Ministers of Ukraine adopts Resolution *On Amendments and Addenda to the Statute on the Procedure for Controlling the Export, Import, and Transit of Certain Items, Equipment, Materials, Software, and Technologies that Can Be Used in the Production of Nuclear Weapons* (No. 826)

2004

- 30 July In compliance with the President of Ukraine Edict No.197/2004 dated 17.02.2004 and addressing the Action Plan to Implement Priority Provisions of the Programme for Ukraine's Integration to the European Union, approved by the Cabinet of Ministers of Ukraine Resolution No.744-r dated 27.12.2002, the draft Law of Ukraine *On Ratification of the Protocol Additional* was submitted for review by the Supreme Council Committee for Foreign Affairs and registered (No.0215)

(Compiled by S. Kondratov)

SCIENTIFIC AND TECHNICAL CENTER OF EXPORT AND IMPORT OF SPECIAL TECHNOLOGIES, HARDWARE AND MATERIALS

The Scientific and Technical Center of Export and Import of Special Technologies, Hardware, and Materials (STC) is a non-governmental, non-profit organization in the field of export control in Ukraine. It was established in 1997 by the "TASKO" corporation on the initiative of the Ministry of Industrial Policy of Ukraine by consent of the State Service of Export Control of Ukraine to render assistance to the subjects of foreign trade activities to meet requirements of legislative and normative acts in the field of export control and create conditions for efficient foreign trade activities of the Ukrainian industry.

The STC:

- Studies and analyzes the international experience concerning export controls, WMD nonproliferation, combating terrorism;
- Carries out R&D works addressing export control and WMD nonproliferation issues;
- Studies and inculcates efficient procedures for export control in industry;
- Analyzes international experience concerning addressing internal compliance systems and develops such systems for Ukrainian industry;
- Develops software for commodities identification;
- Propagates knowledge and know-how in the field of export controls, informs public with nonproliferation issues, main international trends in the field under consideration;
- Co-operates with Ukrainian state authorities and agencies, first of all with the State Service of Export Control of Ukraine; among others STC key partners are the State Customs Service of Ukraine, National Academy of Sciences of Ukraine and some other organizations;
- Renders qualified assistance to the industries and organizations of Ukraine to facilitate their efforts to meet legislation and regulations requirements in the field of export control;
- Analyzes international and domestic issues in the field of export control and control over nuclear materials and technologies;
- Studies general trends in national export control systems and summarizes international experience relatively to cooperation among national export control authorities of different states;
- Arranges training for industries personnel to familiarize them with legislative and normative acts in the field of export controls;
- Issues and publishes training programs, collections and methodological digests, hand books on WMD nonproliferation and export control issues;
- Co-operates with numerous foreign counterparts such as the Commonwealth Trading Partners Inc (the contractor of the US Department of State and Department of Commerce), US DOE Argonne National Laboratory and Pacific Northwest National Laboratory, Center on Export Control Problems (Russia), etc. One of the most important STC foreign partners is the Swedish Nuclear Power Inspectorate rendering essential assistance to Ukraine under the long-term contract covering several important directions of STC efforts.
- Focuses attention of the Ukrainian public on actual issues of the international security;
- Recognizes as its main goal - achievement by the Ukrainian export control system the level adequate to the modern challenges;
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