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Letter to Congressional Leaders on Continuation of the National Emergency Regarding Weapons of Mass Destruction November 12, 1998

Dear Mr. Speaker: (Dear Mr. President:)

On November 14, 1994, in light of the dangers of the proliferation of nuclear, biological and chemical weapons ("weapons of mass destruction"—WMD) and of the means of delivering such weapons, I issued Executive Order 12938, and declared a national emergency under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*). Under section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), the national emergency terminates on the anniversary date of its declaration, unless I publish in the *Federal Register* and transmit to the Congress a notice of its continuation.

The proliferation of weapons of mass destruction and their means of delivery continues to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. Indeed, on July 28, 1998, I issued Executive Order 13094 to strengthen Executive Order 12938 by, *inter alia*, broadening the types of proliferation activity that is subject to potential penalties. I am, therefore, advising the Congress that the national emergency declared on November 14, 1994, must continue in effect beyond November 14, 1998. Accordingly, I have extended the national emergency declared in Executive Order 12938, as amended, and have sent the attached notice of extension to the *Federal Register* for publication.

On July 28, 1998, I amended section 4 of Executive Order 12938 so that the United States Government could more effectively respond to the worldwide threat of weapons of mass destruction proliferation activities. The amendment to section 4 strengthens Executive Order 12938 in several significant ways. The amendment broadens the type of proliferation activity that subjects entities to potential penalties under the Executive order. The original Executive order

provided for penalties for contributions to the efforts of any foreign country, project or entity to use, acquire, design, produce, or stockpile chemical or biological weapons; the amended Executive order also covers contributions to foreign programs for nuclear weapons and for missiles capable of delivering weapons of mass destruction. Moreover, the amendment expands the original Executive order to include attempts to contribute to foreign proliferation activities, as well as actual contributions, and broadens the range of potential penalties to expressly include the prohibition of United States Government assistance to foreign persons, as well as the prohibition of United States Government procurement and imports into the United States.

The following report, which covers activities on or before October 31, 1998, is made pursuant to section 204 of the International Emergency Economic Powers Act (50 U.S.C. 1703) and section 401(c) of the National Emergencies Act (50 U.S.C. 1641(c)), regarding activities taken and money spent pursuant to the emergency declaration. Additional information on nuclear, missile, and/or chemical and biological weapons (CBW) proliferation concerns and non-proliferation efforts is contained in the most recent annual Report on the Proliferation of Missiles and Essential Components of Nuclear, Biological and Chemical Weapons, provided to the Congress pursuant to section 1097 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190), also known as the "Nonproliferation Report," and the most recent annual report provided to the Congress pursuant to section 308 of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (Public Law 102-182), also known as the "CBW Report."

Nuclear Weapons

In May, India and Pakistan each conducted a series of nuclear tests. In response, I imposed sanctions on India and Pakistan as required by the Glenn Amendment. Beyond our unilateral response, world reaction was pronounced and included nearly universal condemnation across a broad range of international fora and a broad range of sanctions, including new restrictions on lending by international financial institutions unrelated to basic human needs and aid from the G-8 and other countries.

Since the mandatory imposition of U.S. sanctions, we have worked unilaterally, with other P-5 and G-8 members, and through the United Nations to dissuade India and Pakistan from taking further steps toward creating operational nuclear forces, to urge them to join multilateral arms control efforts, to persuade them to prevent an arms race and build confidence by practicing restraint, and to resume efforts to resolve their differences through dialogue. The P-5, G-8, and U.N. Security Council have called on India and Pakistan to take a broad range of concrete actions. The United States has over the past 5 months focused most intensely on several objectives that can be met over the short and medium term: an end to nuclear testing and prompt, unconditional adherence to the Comprehensive Nuclear Test Ban Treaty (CTBT); a moratorium on production of fissile material for nuclear weapons and other explosive devices, and engagement in productive negotiations on a fissile material cut-off treaty (FMCT); restraint in deployment of nuclear-capable missiles and aircraft; and adoption of controls meeting international standards on exports of sensitive materials and technology.

Against this backdrop of international pressure on India and Pakistan, U.S. high-level dialogue with Indian and Pakistani officials has yielded some progress. Both governments, having already declared testing moratoria, indicated publicly that they are prepared to adhere to the CTBT under certain conditions. Both withdrew their opposition to negotiations on an FMCT in Geneva at the end of the 1998 Conference on Disarmament session. They have also pledged to institute strict control of sensitive exports that meet internationally accepted standards. In addition, they have resumed bilateral dialogue on outstanding disputes, including Kashmir, at the Foreign Secretary level.

In recognition of these positive steps and to encourage further progress, I decided on November 3 to exercise my authority under the Brownback provision of the 1999 Omnibus Appropriations bill (Public Law 105-277) to waive some of the Glenn sanctions. Through this action, I have authorized the resumption of Export-Import Bank, Overseas Private Investment Corporation, Trade and Development Agency, and International Military Education and Training programs in India and Pakistan and have lifted restrictions on U.S. banks in these countries. We will continue discussions with both governments at the senior and expert levels, and our diplomatic efforts in concert with the P-5 and in international fora.

So far, 150 countries have signed and 21 have ratified the CTBT. During 1998, CTBT signatories conducted numerous meetings of the Preparatory Commission (PrepCom) in Vienna, seeking to promote rapid completion of the International Monitoring System (IMS) established by the Treaty.

On September 23, 1997, I transmitted the CTBT to the Senate, requesting prompt advice and consent to ratification. The CTBT will serve several U.S. national security interests by prohibiting all nuclear explosions. It will constrain the development and qualitative improvement of nuclear weapons; end the development of advanced new types; contribute to the prevention of nuclear proliferation and the process of nuclear disarmament; and strengthen international peace and security. The CTBT marks a historic milestone in our drive to reduce the nuclear threat and to build a safer world.

The Nuclear Suppliers Group (NSG) held its 1998 Plenary in Edinburgh, Scotland, March 30 to April 2, on the twentieth anniversary of the publication of the Nuclear Suppliers Guidelines. With 35 member states, the NSG is a mature, effective, and widely accepted export-control arrangement. Over the past 7 years the NSG has established a Dual-Use Regime (DUR), agreed to require full-scope safeguards as a condition of nuclear supply, created an effective Joint Information Exchange, and strengthened controls over technology and retransfers. The NSG is considering further activities to promote regime transparency, following the success of the 1997 Vienna transparency seminar, and is preparing for a transparency seminar in New York during the run-up to the 1999 NPT PrepCom.

The NSG is considering membership for Belarus, China, Cyprus, Kazakhstan and Turkey. China is the only major nuclear supplier that is not a member of the NSG, although China did join the Zangger Committee last year and recently has expressed an interest in learning more about the NSG.

The NPT Exporters (Zangger) Committee has demonstrated its continued relevance to the multilateral nonproliferation regime as the interpreter of Article III-2 of the NPT by the membership of China in October 1997 by recently agreeing to a statement deploring the Indian and Pakistani nuclear tests. This is the first time the Zangger Committee has ever issued a statement not directly related to publication of its Guidelines. Furthermore, the Zangger Committee is considering a U.S. proposal to add conversion technology to the Trigger List.

Chemical and Biological Weapons

The export control regulations issued under the Enhanced Proliferation Control Initiative (EPCI) remain fully in force and continue to be applied by the Department of Commerce in order to control the export of items with potential use in chemical or biological weapons or unmanned delivery systems for weapons of mass destruction.

Chemical weapons (CW) continue to pose a very serious threat to our security and that of our allies. On April 29, 1997, the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (the Chemical Weapons Convention or CWC) entered into force with 87 of the CWC's 165 signatories as original States Parties. The United States was among their number, having deposited its instrument of ratification on April 25. Russia ratified the CWC on November 5, 1997, and became a State Party on December 5, 1997. As of October 31, 1998, 120 countries (including Iran, Pakistan, and Ukraine) have become States Parties.

The implementing body for the CWC—the Organization for the Prohibition of Chemical Weapons (OPCW)—was established at the entry into force (EIF) of the Convention on April 29, 1997. The OPCW, located in The Hague, has primary responsibility (along with States Parties) for implementing the CWC. It collects declarations, conducts inspections, and serves as a forum for consultation and cooperation among States Parties. It consists of the Conference of

the States Parties, the Executive Council (EC), and the Technical Secretariat (TS).

The EC consists of 41 States Parties (including the United States) and acts as the governing body for the OPCW between annual meetings of the Conference of the States Parties. Since EIF, the EC has met numerous times to address issues such as scale of assessments, CW production facility conversion requests, facility and transitional verification arrangements, and staff regulations.

The TS carries out the verification provisions of the CWC, and presently has a staff of approximately 500, including about 200 inspectors trained and equipped to inspect military and industrial facilities throughout the world. The OPCW has conducted nearly 300 inspections in some 20 countries. It conducted nearly 100 such inspections in the United States. The OPCW maintains a permanent inspector presence at operational U.S. CW destruction facilities in Utah, Nevada, and Johnston Island.

The United States is determined to seek full implementation of the concrete measures in the CWC designed to raise the costs and risks for any state or terrorist attempting to engage in chemical weapons-related activities. The CWC's declaration requirements improve our knowledge of possible chemical weapons activities. Its inspection provisions provide for access to declared and undeclared facilities and locations, thus making clandestine chemical weapons production and stockpiling more difficult, more risky, and more expensive.

The Chemical Weapons Convention Implementation Act of 1998 was enacted into law in October 1998, as part of the Omnibus Consolidated and Emergency Supplemental Appropriation Act, 1999 (Public Law 105-277). Accordingly, we anticipate rapid promulgation of implementing regulations on submission of U.S. industrial declarations to the OPCW. Submission of these declarations will bring the United States into full compliance with the CWC. United States noncompliance to date has, among other things, undermined U.S. leadership in the organization as well as our ability to encourage other States Parties to make complete, accurate, and timely declarations.

Countries that refuse to join the CWC will be politically isolated and prohibited under the CWC from trading with States Parties in certain key chemicals. The relevant treaty provision is specifically designed to penalize in a concrete

way countries that refuse to join the rest of the world in eliminating the threat of chemical weapons. We anticipate rapid promulgation of U.S. regulations implementing these CWC trade restrictions.

The United States also continues to play a leading role in the international effort to reduce the threat from biological weapons (BW). We are an active participant in the Ad Hoc Group (AHG) striving to complete a legally binding protocol to strengthen and enhance compliance with the 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (the Biological Weapons Convention or BWC). This Ad Hoc Group was mandated by the September 1994 BWC Special Conference. The Fourth BWC Review Conference, held in November/December 1996, urged the AHG to complete the protocol as soon as possible but not later than the next Review Conference to be held in 2001. Work is progressing on a draft rolling text through insertion of national views and clarification of existing text. We held four AHG negotiating sessions in 1998, and five are scheduled for 1999.

On January 27, 1998, during the State of the Union Address, I announced that the United States would take a leading role in the effort to erect stronger international barriers against the proliferation and use of BW by strengthening the BWC with a new international system to detect and deter cheating. The United States will work closely with U.S. industry to develop U.S. negotiating positions and then to reach international agreement on: declarations, non-challenge clarifying visits, and challenge investigations. Other key issues to be resolved in the Ad Hoc Group in 1999 are details on mandatory declarations, placement of definitions related to declarations, and questions related to assistance and export controls.

On the margins of the 1998 U.N. General Assembly, senior United States Government representatives attended a Ministerial meeting hosted by the Government of New Zealand and sponsored by the Government of Australia to promote intensified work on the Compliance Protocol. I will continue to devote personal attention to this issue and encourage other heads of state to do the same.

The United States continued to be a leading participant in the 30-member Australia Group

(AG) CBW nonproliferation regime. The United States attended the most recent annual AG Plenary Session from October 12-15, 1998, during which the Group continued to focus on strengthening AG export controls and sharing information to address the threat of CBW terrorism. At the behest of the United States, the AG first began in-depth political-level discussion of CBW proliferation and terrorism during the 1995 Plenary Session following the Tokyo subway nerve gas attack earlier that year. At the 1998 plenary, at the behest of the United States, AG participants shared information on legal and regulatory efforts each member has taken to counter this threat. The AG also reaffirmed its commitment to continue its active outreach program of briefings for non-AG countries, and to promote regional consultations on export controls and nonproliferation to further awareness and understanding of national policies in these areas.

The Group also reaffirmed the participants' shared belief that full adherence to the CWC and the BWC is the best way to achieve permanent global elimination of CBW, and that all States adhering to these Conventions have an obligation to ensure that their national activities support this goal. The AG participants continue to seek to ensure that all relevant national measures promote the object and purposes of the BWC and CWC. The AG participants reaffirmed their belief that existing national export licensing policies on chemical weapons- and biological weapons-related items help to fulfill their obligations established under Article I of the CWC and Article III of the BWC that States Parties not assist, in any way, the acquisition, manufacture, or use of chemical or biological weapons. Given this understanding, the AG participants also reaffirmed their commitment to continuing the Group's activities, now that the CWC has entered into force.

During the last 6 months, we continued to examine closely intelligence and other reports of trade in CBW-related material and technology that might be relevant to sanctions provisions under the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991. No new sanctions determinations were reached during this reporting period. The United States also continues to cooperate with its AG partners and other countries in stopping shipments of proliferation concern.

Missiles for Delivery of Weapons of Mass Destruction

The United States continues to carefully control exports that could contribute to unmanned delivery systems for weapons of mass destruction and to closely monitor activities of potential missile proliferation concern. We also continue to implement the U.S. missile sanctions law. In April 1998, we imposed Category I missile sanctions against North Korean and Pakistani entities for the transfer from North Korea to Pakistan of equipment and technology related to the Ghauri missile. Sanctions imposed against two North Korean entities in August 1997 for transfers involving Category II Missile Technology Control Regime (MTCR) Annex items also remain in effect.

During this reporting period, MTCR Partners continued to work with each other and with potential non-Partner supplier and transshipment states to curb proliferation. Partners emphasized the need for implementing effective export control systems and cooperated to interdict shipments intended for use in missile programs of concern.

The United States was an active participant in the MTCR's highly productive May 1998 Reinforced Point of Contact (RPOC) Meeting. At the RPOC, MTCR Partners engaged in an in-depth discussion of regional missile proliferation concerns, focusing in particular on South Asia. They also discussed steps Partners could take to increase transparency and outreach to nonmembers, and reached consensus to admit the Czech Republic, Poland, and Ukraine to membership in the MTCR. (Reports on their membership have been submitted to the Congress pursuant to section 73A of the Arms Export Control Act.)

In May 1998, the United States was an active participant in the German-hosted MTCR workshop on brokering, catch-all controls, and other export control issues. In June, the United States played a leading role at the Swiss-hosted MTCR workshops on risk assessment in MTCR licensing decisions. The workshops involved the participation of MTCR Partners, as well as several non-MTCR members, and were successful in providing practical insights on export control and licensing issues. In particular, it helped participants identify risk factors and ways to assess them.

The MTCR held its Thirteenth Plenary Meeting in Budapest, Hungary on October 5–9. At the Plenary, the MTCR Partners shared information about activities and programs of missile proliferation concern and considered additional steps they can take, individually and collectively, to prevent the proliferation of delivery systems for weapons of mass destruction, focusing in particular on the threat posed by missile-related activities in South and North East Asia and the Middle East.

During their discussions, the Partners gave special attention to North Korean (DPRK) missile activities, expressing serious concern about the DPRK's missile export practices and its efforts to acquire increasingly long-range missiles. The MTCR Plenary Chairman issued a statement reflecting the Partners' concerns, noting in particular that the Partners urged the DPRK to refrain from further flight tests of WMD-capable missiles and to cease exports of equipment and technology for such missiles. The Partners also agreed to maintain special scrutiny over their missile-related exports in order not to support North Korean missile development in any way.

At Budapest, the Partners also discussed ways to further the MTCR's efforts to promote openness and outreach to nonmembers, including by sponsoring additional seminars and workshops for members and nonmembers. The Partners supported a U.S. proposal for an MTCR-sponsored workshop in 1999 on "intangible transfers of technology," in order to develop a greater understanding of how proliferators misuse the Internet, scientific conferences, plant visits, and student exchange programs to acquire sensitive technology and to identify steps countries can take to address this problem. They also agreed to give further consideration to a technical-level workshop for border guards and Customs authorities on export control enforcement. In addition, the Partners noted China's increased willingness to engage in meaningful dialogue on missile nonproliferation and export control issues, and renewed their previous invitation in principle to China to take the steps necessary to join the Regime.

The Partners also made additional progress at Budapest toward reformatting the MTCR Annex (the list of MTCR-controlled items) to

improve clarity and uniformity of implementation while maintaining the coverage of the current Annex. They hope to complete this process in the near future.

During this reporting period, the United States also worked unilaterally and in coordination with its MTCR Partners to combat missile proliferation and to encourage nonmembers to export responsibly and to adhere to the MTCR Guidelines. Since my last report, we have continued missile nonproliferation discussions with China and North Korea and other countries in Central Europe, the Middle East, and Asia.

In October 1998, the United States and the DPRK held a third round of missile talks, aimed at constraining DPRK missile production, deployment, flight-testing, and exports. The United States expressed serious concerns about North Korea's missile exports and indigenous missile activities, and made clear that we regard as highly destabilizing the DPRK's attempt on August 31 to use a Taepo Dong 1 missile to orbit a small satellite. We voiced strong opposition to North Korea's missile exports to other countries and made clear that further launches of long-range missiles or further exports of such missiles or their related technology would have very negative consequences for efforts to improve U.S.-North Korean relations. The talks concluded with an agreement to hold another round at the earliest practical date.

In response to reports of continuing Iranian efforts to acquire sensitive items from Russian entities for use in Iran's missile development program, the United States continued its high-level dialogue with Russia aimed at finding ways the United States and Russia can work together to cut off the flow of sensitive goods to Iran's ballistic missile development program. This effort has netted some positive results. For example, during this reporting period, Russia began implementing "catch-all" provisions imposing controls over the export of any material destined

for a WMD or missile program, and provided detailed implementing guidance on these controls for Russian entities. Russia also agreed to meet regularly with the United States to discuss export control issues. In addition, at the summit in September, President Yeltsin and I announced the formation of seven bilateral working groups—nuclear, missile, catch-all and internal compliance, conventional weapons, law enforcement, licensing, and customs—for the rapid exchange of information on the wide range of nonproliferation issues.

In July, Russia launched special investigations of nine entities suspected of cooperating with foreign programs to acquire WMD and missile delivery systems. Russia subsequently took steps to end exports to Iran by three of these entities and to pursue two of the cases as smuggling issues. Consistent with the Russian action, the United States took action against seven of the nine entities in July pursuant in part to Executive Order 12938, as amended. We suspended all United States Government assistance to these seven entities and banned all U.S. exports to them and all of their imports to the United States.

Expenses

Pursuant to section 401(c) of the National Emergencies Act (50 U.S.C. 1641(c)), I report that there were no expenses directly attributable to the exercise of authorities conferred by the declaration of the national emergency in Executive Order 12938 during the period from May 14, 1998, through October 31, 1998.

Sincerely,

WILLIAM J. CLINTON

NOTE: Identical letters were sent to Newt Gingrich, Speaker of the House of Representatives, and Albert Gore, Jr., President of the Senate. The notice is listed in Appendix D at the end of this volume.