

accused Russia of failing to abide by the terms of the COH and its other international law obligations:

Russia failed to live up to its own commitments—including its obligations under international humanitarian law and UNSCR 2254—and was also either unwilling or unable to ensure Syrian regime adherence to the arrangements to which Moscow agreed. Rather, Russia and the Syrian regime have chosen to pursue a military course, inconsistent with the Cessation of Hostilities, as demonstrated by their intensified attacks against civilian areas, targeting of critical infrastructure such as hospitals, and preventing humanitarian aid from reaching civilians in need, including through the September 19 attack on a humanitarian aid convoy.

The U.S. will also withdraw personnel that had been dispatched in anticipation of the possible establishment of the Joint Implementation Center. To ensure the safety of our respective military personnel and enable the fight against Daesh, the United States will continue to utilize the channel of communications established with Russia to de-conflict counterterrorism operations in Syria.<sup>90</sup>

Although the United States suspended bilateral discussions with Russia related to the COH, the White House stated that “the President directed his team to continue multilateral discussions with key nations with a vested interest in the region to encourage all sides to support a more durable and sustainable diminution of violence and, more broadly, a diplomatic resolution to the civil war.”<sup>91</sup>

On the same day that the United States suspended cooperation under the COH, Russia announced that it would suspend the Plutonium Disposal and Nuclear Management Agreement between the United States and Russia.<sup>92</sup> The conflict in Syria continues.

*Russia Suspends Bilateral Agreement with United States Disposal of Weapons-Grade Plutonium*  
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In October 2016, Russian President Vladimir Putin suspended the Plutonium Management and Disposition Agreement (PMDA), a bilateral treaty between Russia and the United States governing the disposal of surplus weapons-grade plutonium.<sup>1</sup> A Russian Foreign Ministry director explained that the decision was prompted by a “dramatic change in the situation . . . brought about by the unfriendly steps taken by the United States.”<sup>2</sup> He also cited “the United States’ obvious inability and unwillingness to honour its obligations . . .

<sup>90</sup> *Id.*

<sup>91</sup> White House Press Release, Readout of the President’s National Security Council Meeting (Oct. 14, 2016), at <https://www.whitehouse.gov/the-press-office/2016/10/14/readout-presidents-national-security-council-meeting>.

<sup>92</sup> President of Russ. Press Release, Draft Law Suspending the Russia-U.S. Plutonium Management and Disposition Agreement Submitted to the State Duma (Oct. 3, 2016), at <http://en.kremlin.ru/acts/news/53009>; see also U.S. Dep’t of State Press Release, Unofficial Composite Text of the United States-Russian Federation 2000 Plutonium Management and Disposition Agreement, as Amended, at <http://www.state.gov/documents/organization/213493.pdf>; Kristina Daugirdas & Julian Davis Mortenson, *Contemporary Practice of the United States*, 111 AJIL \_\_ (2017).

<sup>1</sup> Ministry of Foreign Aff. of the Russ. Fed’n Press Release, Remarks by Mikhail Ulyanov, Director of the Foreign Ministry Department for Non-Proliferation and Arms Control and Representative of the Russian Federation at the First Committee of the 71st Session of the UNGA, New York, October 3, 2016 (Oct. 4, 2016), at [http://www.mid.ru/en/general\\_assembly/-/asset\\_publisher/lrzZMhfoYRUj/content/id/2486599](http://www.mid.ru/en/general_assembly/-/asset_publisher/lrzZMhfoYRUj/content/id/2486599) [hereinafter Remarks by Mikhail Ulyanov].

<sup>2</sup> *Id.*

on time and in full.”<sup>3</sup> The United States expressed disappointment at the suspension, arguing that continued implementation was in both states’ interests.

The United States and the Russian Federation initially signed the PMDA in 2000.<sup>4</sup> As amended by protocols in 2006<sup>5</sup> and 2010,<sup>6</sup> the PMDA obliges each party to dispose of at least thirty-four metric tons of disposition plutonium and imposes certain requirements regarding the method of disposition.<sup>7</sup> Of particular note for the present dispute, Article III (1) provides: “Disposition shall be by irradiation of disposition plutonium as fuel in nuclear reactors or any other methods that may be agreed by the Parties in writing.”<sup>8</sup>

The 2010 amendments entered into force following a July 2011 exchange of diplomatic notes between Secretary of State Hillary Clinton and Foreign Minister Sergey Lavrov.<sup>9</sup> A State Department fact sheet described that milestone as

mark[ing] another significant step in both countries’ efforts to eliminate nuclear-weapon-grade materials and to reduce nuclear dangers. . . . The initial combined amount, 68 metric tons [of disposition plutonium], represents enough material for about 17,000 nuclear weapons, and the Agreement envisions disposition of more weapon-grade plutonium over time.<sup>10</sup>

Importantly, the agreement sought to make “arms reductions irreversible by . . . preventing the plutonium from ever being reused for weapons or any other military purpose.”<sup>11</sup> The agreement also addresses monitoring, inspections, and financial support.<sup>12</sup>

<sup>3</sup> *Id.*

<sup>4</sup> Unofficial Composite Text of the United States–Russian Federation 2000 Plutonium Management and Disposition Agreement, as Amended, U.S. Dep’t of State, at <http://www.state.gov/documents/organization/213493.pdf> [hereinafter Composite Text].

<sup>5</sup> Protocol to the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Management and Disposition of Plutonium Designated as No Longer Required for Defense Purposes and Related Cooperation, Sept. 15, 2006, TIAS No. 11-713.1.

<sup>6</sup> Protocol to the Agreement between the Government of the United States of America and the Government of the Russian Federation Concerning the Management and Disposition of Plutonium Designated as No Longer Required for Defense Purposes and Related Cooperation, Apr. 13, 2010, TIAS No. 11-713.2 [hereinafter 2010 Protocol]; see also John R. Crook, Contemporary Practice of the United States, 104 AJIL 680 (2010).

<sup>7</sup> Composite Text, *supra* note 4, Art. II(1). The PMDA defines “Disposition Plutonium” as “weapon-grade plutonium that has been (a) withdrawn from nuclear weapon programs, (b) designated as no longer required for defense purposes, and (c) declared in the Annex.” *Id.* Art. I(2).

<sup>8</sup> Composite Text, *supra* note 4.

<sup>9</sup> U.S. Dep’t of State Press Release, Entry into Force of the U.S.-Russian Agreement to Dispose of Excess Weapon-Grade Plutonium (July 13, 2011), at <http://www.state.gov/r/pa/prs/ps/2011/07/168287.htm> [hereinafter July 13, 2011 Press Release].

<sup>10</sup> *Id.*

<sup>11</sup> U.S. Dep’t of State Press Release, 2000 Plutonium Management and Disposition Agreement (Apr. 13, 2010), at <http://www.state.gov/r/pa/prs/ps/2010/04/140097.htm> [hereinafter PMDA Press Release]; see Composite Text, *supra* note 4 (“One of the key objectives of the Agreement . . . is to reduce irreversibly stockpiles of weapon-grade plutonium from each side’s nuclear weapons programs.”); see also *Plutonium Disposition Program*, NAT’L NUCLEAR SEC. ADMIN. (June 26, 2013), at <https://nnsa.energy.gov/mediaroom/factsheets/pudisposition> [hereinafter *Plutonium Disposition Program*] (“Weapon-grade plutonium and highly enriched uranium (HEU) are the critical ingredients for making a nuclear weapon. With the end of the Cold War, hundreds of tons of these materials were determined to be surplus to U.S. and Russian defense needs. Denying access to plutonium and HEU is the best way to prevent nuclear proliferation to rogue states and terrorist organizations. The most certain method to prevent these materials from falling into the wrong hands is to dispose of them.”).

<sup>12</sup> PMDA Press Release, *supra* note 11.

The agreement required disposition of plutonium to begin in 2018.<sup>13</sup> As explained in a 2010 press release from the U.S. State Department,

[w]eapon-grade plutonium, unlike weapon-grade uranium, cannot be blended with other materials to make it unusable in weapons. But it can be fabricated into mixed oxide uranium-plutonium (MOX) fuel and irradiated in civil nuclear power reactors to produce electricity. This irradiation results in spent fuel, a form that is not usable for weapons or other military purposes and a form that the Protocol prohibits being changed any time in the future unless subject to agreed international monitoring measures and only for civil purposes.

The amended PMDA will provide that this weapon-grade plutonium be disposed by irradiating it in light water reactors in the United States and in fast-neutron reactors operating under certain nonproliferation conditions in the Russian Federation. The U.S. MOX fuel fabrication facility being constructed at the Department of Energy's Savannah River Site is planned to begin operation in 2016; Russia has already fabricated MOX fuel on a limited basis and is in the process of constructing/modifying fuel fabrication facilities capable of producing MOX fuel at levels required to meet the PMDA's disposition rate.<sup>14</sup>

The method planned for disposing of plutonium in the United States proved problematic, however. Construction of the Savannah River fuel fabrication facility far exceeded initial estimates for both budget and timeline.<sup>15</sup> In addition, as uranium prices fell since 2010, so too did demand for MOX fuel.<sup>16</sup> In February 2016, the Obama administration's budget request for the Department of Energy reflected a plan to terminate the Savannah River site; the budget request also sought \$15 million for "a dilute and dispose option that will disposition surplus U.S. weapon-grade plutonium by diluting it and disposing of it at a geologic repository at significantly lower cost and less time than the MOX option."<sup>17</sup> On the day of the budget rollout, Secretary of Energy Ernest Moniz stressed that MOX is unaffordable and that fully funding the facility would require millions of dollars more annually:

The reality is the MOX program, with a lifetime cost certainly north of 30, probably 40, billion dollars with a need for an additional, say, half a billion dollars a year for decades just does not look to be affordable. The dilution approach . . . is surely technically less challenging and we believe is

<sup>13</sup> July 13, 2011 Press Release, *supra* note 9.

<sup>14</sup> PMDA Press Release, *supra* note 11; *see also* Crook, *supra* note 6, at 681.

<sup>15</sup> Mike Eckel, *As Putin Swipes at U.S. Over Plutonium Disposal, Nuclear Cooperation Takes a Hit*, RADIOFREEEUROPE (Apr. 23, 2016), at <http://www.rferl.org/a/putin-swipes-us-plutonium-disposal/27692331.html>. In 2013, the National Nuclear Security Administration, which bears responsibility for disposition, described a lack of adequate funding for the MOX disposition it was supposed to undertake: "The current strategy to implement this agreement [the PMDA] in the United States involves the National Nuclear Security Administration (NNSA), under the Office of Fissile Materials Disposition, building a Mixed Oxide (MOX) Fuel Fabrication Facility, a capability to disassemble nuclear weapons pits and convert the resulting plutonium into a form suitable to be made into MOX fuel, and a Waste Solidification Building to handle the waste resulting from pit disassembly and MOX operations at the Savannah River Site (SRS). However, unanticipated cost increases for the MOX project and plutonium disposition program have prompted the Department to slow down the MOX project and other activities associated with the current plutonium disposition strategy while determining whether there are options to complete the mission more efficiently." Plutonium Disposition Program, *supra* note 11.

<sup>16</sup> Eckel, *supra* note 15.

<sup>17</sup> DEP'T OF ENERGY, DOE/CF-0125, FY 2017 CONGRESSIONAL BUDGET REQUEST: BUDGET IN BRIEF 6 (Feb. 2016); *see also* DEP'T OF ENERGY, DOE/CF-0119 vol. 1, FY 2017 CONGRESSIONAL BUDGET REQUEST: NATIONAL NUCLEAR SECURITY ADMINISTRATION (Feb. 2016). The dilute and dispose method "involves adding the plutonium to a nonradioactive substance, encasing it in glass or metal-can type containers or oil drums, and burying it at a federal waste site in New Mexico. Unlike with MOX, experts say this method could still allow for plutonium to be extracted some day and put back into weapons, though with difficulty." Eckel, *supra* note 15.

less than half the cost, even going forward. . . . I'm sure that we will have a lively discussion about this in the Congress.<sup>18</sup>

Putin publicly voiced his concerns about U.S. implementation of the agreement in April 2016. He said:

We signed this agreement and settled on the procedures for the material's destruction, agreed that this would be done on an industrial basis, which required the construction of special facilities. Russia fulfilled its obligations in this regard and built these facilities, but our American partners did not.

Moreover, only recently, they announced that they plan to dispose of their accumulated highly enriched nuclear fuel by using a method other than what we agreed on when we signed the corresponding agreement, but by diluting and storing it in certain containers. This means that they preserve what is known as the breakout potential, in other words it can be retrieved, reprocessed and converted into weapons-grade plutonium again. This is not what we agreed on. Now we will have to think about what to do about this and how to respond to this.<sup>19</sup>

The State Department denied that it was violating the PMDA,<sup>20</sup> arguing that while the agreement does specify disposition "by irradiation . . . as fuel in nuclear reactors," it also permits disposition by "any other methods that may be agreed by the Parties in writing."<sup>21</sup> A State Department spokesperson explained:

What I can say is that since 2013 we've been in communication with Russia about the U.S. review of disposition methods and its results that's consistent with the U.S.-Russia Plutonium Management and Disposition Agreement. And this agreement essentially provides a path for the parties to consult and agree on disposition methods that do not involve irradiation in nuclear reactors.<sup>22</sup>

Eric Lund, a spokesperson for the State Department's Bureau of International Security and Nonproliferation, indicated that the consultations to reach the necessary agreement would take place at some point in the future: "Accommodating any such new method of disposal . . . requires written agreement between the parties; we would expect such consultations on a separate agreement to begin at an appropriate later time."<sup>23</sup>

<sup>18</sup> *FY 2017 Budget Request: NNSA Up 2.9%; Showdown with South Carolina Delegation on MOX Looms*, AM. INST. OF PHYSICS (Feb. 18, 2016), at <https://www.aip.org/fyi/2016/fy-2017-budget-request-nnsa-29-showdown-south-carolina-delegation-mox-looms>.

<sup>19</sup> President of Russ. Press Release, Truth and Justice Regional and Local Media Forum (Apr. 7, 2016), at <http://en.kremlin.ru/events/president/news/51685>.

<sup>20</sup> Eckel, *supra* note 15.

<sup>21</sup> See 2010 Protocol, *supra* note 6, Art. III(1).

<sup>22</sup> U.S. Dep't of State Press Release, Daily Press Briefing (Apr. 11, 2016), at <http://www.state.gov/r/pa/prs/dpb/2016/04/255708.htm>.

<sup>23</sup> Eckel, *supra* note 15. In June 2015, U.S. Secretary of Energy Ernest Moniz established a Plutonium Disposition Red Team "to assess options for the disposition of 34MT of surplus weapon-grade plutonium." The Team's Final Report, published in August of that year, warned that electing the cheaper "Dilute and Dispose" process, over continued support of MOX, would have political ramifications perhaps less positive than its practical consequences. "The review team . . . believes that the Dilute and Dispose approach meets the requirements for permanent disposition, but recognizes that this assertion will ultimately be subject to agreement with the Russians, and that the decision will be as much political as technical." However, it noted that "[t]he combination of evolving international circumstances and the fact that the U.S. has already accommodated a Russian national interest in a previous PMDA modification causes the Red Team to believe that the federal government has a reasonable position with which to enter PMDA negotiations." THOM MASON, FINAL REPORT OF THE PLUTONIUM DISPOSITION RED TEAM (2015), at <https://nnsa.energy.gov/sites/default/files/nnsa/inlinefiles/Pu-Disposition-Red-Team-Report-081315vFinal-SM.pdf>.

Over the following months, the U.S. Congress and the administration went back and forth over the future of the Savannah River site. Legislators—especially from South Carolina, where the site is located—supported the continuation of funding.<sup>24</sup> The administration continued to oppose it. In a June 2016 “Statement of Administration Policy,” the Executive Office of the President wrote:

The Administration strongly objects to continued construction of the Mixed Oxide (MOX) Fuel Fabrication Facility . . . . Even with a firm fixed-price contract for the MOX Fuel Fabrication Facility, numerous previous studies have confirmed that the alternative disposition method is expected to be significantly faster and less expensive . . . . The already-proven alternative method of disposition is expected to be significantly faster and less expensive than the MOX approach, has far lower risks, and will begin to move plutonium out of the State of South Carolina much sooner.<sup>25</sup>

Although the Department of Energy requested \$270 million in funding for MOX—and the president supported that figure—the House’s National Defense Authorization Act for Fiscal Year 2017 allocated \$340 million to the project, roughly 20 percent more than requested.<sup>26</sup> (The version of that bill that was later enacted likewise authorized \$340 million.<sup>27</sup>)

On October 3, 2016, Putin submitted a draft law to the State Duma that would suspend the PMDA.<sup>28</sup> Following the Duma’s approval, Putin signed it into law on October 31.<sup>29</sup> Russia’s Office of the President offered a detailed explanation for the legislation. In addition to citing planned changes in the United States’ methods for disposing of plutonium, that explanation referenced the U.S. military presence in Eastern Europe and U.S. sanctions:

Recently, the United States has attempted to revise its plutonium disposition strategy outlined in the 2010 Protocol and change its disposition methods. The US plans to dispose of its plutonium by burial instead of irradiation as stipulated by the Protocol. Even back when the Agreement was in development, Russian experts objected to such approach as not irreversible. The 2000 amendments provided for the major part of the American plutonium to be irradiated and only a small amount to be buried underground. The Protocol of April 13, 2010, completely discarded the possibility of burying plutonium, which was part of a compromise reached during the drafting of the Protocol.

<sup>24</sup> See, e.g., U.S. Senator Lindsey Graham Press Release, Graham Opposes Obama Budget and Obama Proposal on MOX Funding (Feb. 9, 2016), at <http://www.lgraham.senate.gov/public/index.cfm/press-releases?ID=C5871C66-556D-474B-89E8-70031346BC68> (“The Obama Administration’s reckless proposal to terminate the MOX program, without a proven disposition plan in place, is both ill-conceived and dangerous. This isn’t the first time they have proposed halting the MOX program, but given the fact their time in office is running short, thankfully it is their last.”); Derrek Asberry, *Senate Committee Seeks \$340 Million for MOX*, POST & COURIER (May 12, 2016), at [http://www.postandcourier.com/archives/senate-committee-seeks-m-for-mox/article\\_22ee8f50-0605-5bef-ab6e-2b504ece73ba.html](http://www.postandcourier.com/archives/senate-committee-seeks-m-for-mox/article_22ee8f50-0605-5bef-ab6e-2b504ece73ba.html); Mary Orndorff Troyan, *Congress Divided on MOX Funding*, GREENVILLE ONLINE (Apr. 13, 2016, 5:22 PM), at <http://www.greenvilleonline.com/story/news/politics/2016/04/13/congress-divided-mox-funding/82985230>.

<sup>25</sup> OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, STATEMENT OF ADMINISTRATION POLICY: S.2943—NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2017 (2016).

<sup>26</sup> National Defense Authorization Act for Fiscal Year 2017, H.R. 4909, 114th Cong., 1230–31, 1388 (2016).

<sup>27</sup> National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328 (2016).

<sup>28</sup> President of Russ. Press Release, Draft Law Suspending the Russia-US Plutonium Management and Disposition Agreement Submitted to the State Duma (Oct. 3, 2016), at <http://en.kremlin.ru/acts/news/5300> [hereinafter Draft Law Submitted to State Duma].

<sup>29</sup> President of Russ. Press Release, Law Suspending Russian-US Plutonium Management and Disposition Agreement (PMDA) Signed (Oct. 31, 2016), at <http://en.kremlin.ru/acts/news/53167>.

It should be noted that to date, the US has not requested Russia's approval in order to change its plutonium disposition method.

After the Agreement and its protocols came in force, the United States took a number of steps resulting in a fundamental change in strategic stability.

Under the pretext of the crisis in Ukraine, the United States is building up its military presence in Eastern Europe, including the states that joined NATO after 2000—the year when the agreement was signed. In 2015 six new forward command posts were deployed in Bulgaria, Latvia, Poland, Romania and Estonia. Their main task is to ensure rapid transfer of large NATO troop contingents to Eastern Europe in the event that the order is given. Units of the US Armed Forces have been introduced in the Baltic states and the number of NATO aircraft based on their airfields has been increased. In Ukraine, American instructors are training militants from the Right Sector, which is banned in Russia.

Apart from actions aimed at changing the military-strategic balance, the United States is taking measures to weaken the Russian economy and violate the rights of Russian citizens. Thus, in 2012 the United States passed the so-called Sergei Magnitsky law in accordance with which Washington openly sought to protect economic crime in the Russian Federation. In 2014 Washington passed a law supporting the freedom of Ukraine, which allows it to interfere in the domestic affairs of Russia. In addition, in 2014 the United States introduced sanctions against the Russian Federation, some of its territories, as well as companies and individuals.<sup>30</sup>

Mikhail Ulyanov, Director of the Foreign Ministry Department for Non-Proliferation and Arms Control, reiterated the above concerns and also provided more detail about Russian objections to the United States' plans regarding disposition methods:

In particular, the PMDA and the April 13, 2010 Protocol to it provide for the irradiation of disposition weapon-grade plutonium as fuel in nuclear reactors. This method was agreed upon to reduce irreversibly stockpiles of weapon-grade plutonium from each side's nuclear weapons programmes.

The Russian Federation has taken all the necessary measures to fulfil its obligations under the PMDA. It has created and brought to full power the BN-800 fast neutron reactor to irradiate disposition weapon-grade plutonium as fuel and completed the construction of a facility for the fabrication of mixed uranium-plutonium fuel.

At the same time, the United States has not implemented its obligations and it is unlikely that it will do so in the near future. The Savannah River facility for the fabrication of mixed uranium oxide-plutonium oxide (MOX) fuel is only two-thirds finished and the project has been suspended. The United States has not modified its reactors for the use of this fuel. Ultimately, US experts have concluded that the United States will need another 20 to 30 years to start disposing of weapon-grade plutonium in keeping with US-Russian agreements, whereas both countries were to begin disposition by 2018.

In this situation, the United States has decided, without consulting the Russian Federation, to dispose of its plutonium in a different manner—by mixing it with radioactive waste and burying it underground in rooms that have been excavated within a salt formation. This disposition was discussed during the drafting of the PMDA and was discarded as not irreversible. Therefore, the PMDA as amended by the 2010 Protocol does not stipulate the possibility of the underground burial of disposition plutonium.

<sup>30</sup> Draft Law Submitted to State Duma, *supra* note 28; see also Ministry of Foreign Aff. of the Russ. Fed'n Press Release, Comment by the Foreign Ministry on the Presidential Executive Order Suspending the Plutonium Management and Disposition Agreement (Oct. 3, 2016), at [http://www.mid.ru/en/web/guest/kommentarii\\_-predstavitelya/-/asset\\_publisher/MCZ7HQuMdqBY/content/id/2485021](http://www.mid.ru/en/web/guest/kommentarii_-predstavitelya/-/asset_publisher/MCZ7HQuMdqBY/content/id/2485021) (reiterating these complaints).

Under the PMDA, the parties are to consult each other in advance of any change in their disposal methods. The United States has not officially notified Russia of its intention to use an alternative disposition method.

Despite this, the United States was unilaterally preparing to dispose of its plutonium in a manner that has been previously rejected. In particular, the US administration has indicated that it will terminate the MOX programme, based on the Fiscal Year 2017 Budget Request.

Considering that Russia has financed the bulk of its planned investment in the creation of facilities to dispose of plutonium in keeping with a method that was coordinated with its US partners, we are perplexed, to put it mildly, by US officials' statements on Washington's intention to save money by choosing an alternative disposal method.<sup>31</sup>

Separately, Ulyanov argued that the suspension is "fully in keeping with Article 62 of the 1969 Vienna Convention on the Law of Treaties."<sup>32</sup> Article 62 provides, in relevant part:

1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless:
  - (a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and
  - (b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty . . . .

. . .
3. If, under the foregoing paragraphs, a party may invoke a fundamental change of circumstances as a ground for terminating or withdrawing from a treaty it may also invoke the change as a ground for suspending the operation of the treaty.<sup>33</sup>

At a press briefing on October 3, Elizabeth Trudeau, Director of the State Department Press Office, commented on Russia's decision without addressing the Vienna Convention argument for suspension:

We regret Russia's decision to suspend this agreement unilaterally. The United States remains committed to the agreement. We believe it's in the best interests of both the United States and Russia as part of our efforts to secure nuclear materials and combat nuclear terrorism. I would note this is the latest in a series of steps by Russia to end longstanding cooperation on nuclear security and disarmament, including its decision to not participate in the 2016 Nuclear Security Summit, and its unwillingness to continue strategic arms control reductions.

I would also note it's disingenuous of Russia to cite the United States threat to strategic stability as a reason for this decision. The United States seeks a constructive dialogue with Russia on strategic issues, but it is Russia instead who continues to engage in destabilizing activities, and to suspend cooperation under existing agreements like this one that benefit international security.<sup>34</sup>

<sup>31</sup> Remarks by Mikhail Ulyanov, *supra* note 1.

<sup>32</sup> *Id.*; see also Draft Law Submitted to State Duma, *supra* note 28 ("The actions taken by the United States fundamentally changed the circumstances in which the Agreement and its protocols were signed. Therefore, the suspension of the Agreement is a reciprocal measure by the Russian Federation and does not violate the 1969 Vienna Convention on the Law of Treaties. Importantly, the plutonium covered by the Agreement remains outside the nuclear weapons sphere, which attests to Russia's commitment to limiting nuclear arms.").

<sup>33</sup> Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331.

<sup>34</sup> U.S. Dep't of State Press Release, Daily Press Briefing (Oct. 3, 2016), at <https://www.state.gov/r/pa/prs/dpb/2016/10/262717.htm>.

At another briefing on the same day, Press Secretary Josh Earnest said:

This is an announcement that we were disappointed by. The decision by the Russians to unilaterally withdraw from this commitment is disappointing . . . . The United States has been steadfast since 2011 in implementing our side of the bargain, and we would like to see the Russians continue to do the same thing.<sup>35</sup>

In a subsequent briefing, Earnest emphasized that continued implementation was in the national interest of both parties:

[T]he United States believes that these are important priorities, and we're hopeful that agreements that were reached by the Russian government—or between the United States and Russian government that were rooted in each side's national interest will continue to be pursued, not just because of the explicit obligation that they have to pursue those agreements, but because of the clear national interest that they have in seeing those agreements thrive.<sup>36</sup>

Along these same lines, State Department Deputy Spokesperson Mark C. Toner called the suspension a “real tragedy, because . . . it's in the interest of . . . both our countries to continue those efforts.”<sup>37</sup>

*The United States Makes Payment to Family of Italian Killed in CIA Air Strike*  
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In January 2015, a CIA drone killed an Italian aid worker named Giovanni Lo Porto during a strike on an Al Qaeda compound in the Pakistan-Afghanistan border region. In July 2016, the Obama Administration reached a settlement agreement with Lo Porto's family that included a payment by the United States of more than one million euros.

In early 2012, Lo Porto traveled to Pakistan for a job with an NGO that was helping to rebuild an area damaged by floods.<sup>1</sup> Soon after his arrival, Al Qaeda operatives kidnapped him.<sup>2</sup> Lo Porto's captors also held Dr. Warren Weinstein, an American working as a contractor for the U.S. Agency for International Development who had been kidnapped in 2011.<sup>3</sup> Italian authorities reportedly told Lo Porto's family in December 2014 “that they were in contact with intermediaries and making progress on negotiations.”<sup>4</sup>

In January 2015, the United States bombed the compound where Lo Porto and Weinstein were being held. Both men were killed, along with Ahmed Farouq, a U.S. national and Al

<sup>35</sup> White House Press Release, Press Briefing by Press Secretary Josh Earnest (Oct. 3, 2016), at <https://www.whitehouse.gov/the-press-office/2016/10/03/press-briefing-press-secretary-josh-earnest-1032016>.

<sup>36</sup> White House Press Release, Press Briefing by Press Secretary Josh Earnest (Oct. 5, 2016), at <https://www.whitehouse.gov/the-press-office/2016/10/05/press-briefing-press-secretary-josh-earnest-1052016>.

<sup>37</sup> U.S. Dep't of State Press Release, Daily Press Briefing (Oct. 5, 2016), at <https://www.state.gov/r/pa/prs/dpb/2016/10/262821.htm>.

<sup>1</sup> Peter Baker, *Obama Apologizes After Drone Kills American and Italian Held by Al Qaeda*, N.Y. TIMES (Apr. 23, 2015), at <http://www.nytimes.com/2015/04/24/world/asia/2-qaeda-hostages-were-accidentally-killed-in-us-raid-white-house-says.html>.

<sup>2</sup> Elisabetta Povoledo, *Giovanni Lo Porto Was Known as Aid Worker Drawn to Needy*, N.Y. TIMES (Apr. 23, 2015), at <http://www.nytimes.com/2015/04/24/world/europe/american-drone-strike-italian-aid-worker-giovanni-lo-porto.html>.

<sup>3</sup> Baker, *supra* note 1.

<sup>4</sup> Cora Currier, *One Year On, No Justice for Italian Hostage Killed in U.S. Drone Strike*, INTERCEPT (Mar. 15, 2016, 8:04 PM), at <https://theintercept.com/2016/03/15/one-year-on-no-justice-for-giovanni-lo-porto-italian-hostage-killed-in-us-drone-strike>.