A new arrangement to prevent the spread of ballistic missiles was launched in The Hague November 25-26 when 93 countries, including the United States, signed the International Code of Conduct against Ballistic Missile Proliferation (ICOC). It is the most wide-ranging international agreement on missile proliferation signed to date.

The purpose of the code is “to prevent and curb the proliferation of Ballistic Missile systems capable of delivering weapons of mass destruction,” according to its text. It does not prohibit ballistic missiles but calls on subscribing states “to exercise maximum possible restraint in the development, testing and deployment of Ballistic Missiles capable of delivering weapons of mass destruction, including, where possible, to reduce national holdings of such missiles.”

Under the code, states agree not to assist ballistic missile programs in countries suspected of developing nuclear, biological, or chemical weapons. The ICOC also calls for subscribing states to “exercise the necessary vigilance” in assisting other countries’ space-launch programs, because countries could use space programs to disguise ballistic missile programs.

Although subscribing countries have agreed to adhere to the agreement, the code is not a treaty, it is not legally binding, and it contains no formal consequences for noncompliance. It came into effect November 25, the first day of the launching conference, where it was renamed the “Hague Code of Conduct.”

The code addresses a gap in the nonproliferation regime: there is no formal international prohibition against developing, acquiring, or selling ballistic missiles. Although the Missile Technology Control Regime (MTCR) seeks to restrict proliferation of missiles, it only does so through export controls and has only 33 members. The code has a much larger membership and, unlike the MTCR, calls on subscribing states to show restraint in their own missile programs.

MTCR members conceived of the code in 1999 as a way to expand efforts to prevent ballistic missile proliferation. MTCR states first circulated a draft code at their October 2000 plenary meeting and finished a draft code in September 2001. The European Union then took the lead in advancing work on the draft and during 2002 convened meetings to involve non-MTCR states in the code, with the goal of finalizing the agreement by the end of the year.

The agreement establishes transparency measures in ballistic missile and space-launch programs, although it specifies that they do not “serve as justification for the programmes” to which they apply. The code calls for states to “exchange pre-launch notifications on their Ballistic Missile and Space Launch Vehicle launches and test flights...[including information on] the generic class of the Ballistic Missile or Space Launch Vehicle, the planned launch notification window, the launch area and the planned direction.”

In addition, the ICOC calls for states to submit an annual declaration to Austria—which will serve as the administrative contact for the code—“providing an outline of their Ballistic Missile policies,” including information on ballistic missile systems and launch sites. It also calls for states to provide information on the number and type of ballistic missiles launched each year.
The code also asks states to make similar declarations providing an outline of their space-launch policies and to consider inviting international monitors to visit launch sites.

**Future Steps**

All UN member states, except Iraq, were invited to join the code, according to a November 15 statement from the Dutch Ministry of Foreign Affairs. Countries could only attend the conference, however, if they planned to subscribe to the code, a Danish official said in a November 19 interview.

John Bolton, U.S. undersecretary of state for arms control and international security, referred to the code in a November 25 statement as “an important addition to the wide range of tools available to countries to impede and roll back” ballistic missile proliferation. He cited the MTCR and missile defense as other such tools.

Most participants viewed the conference as the beginning of a process to contain ballistic missile proliferation. The Dutch Minister of Foreign Affairs Jaap de Hoop Scheffer identified two future tasks in his November 26 speech to the conference: encouraging additional countries to join the code and implementing the code as soon as possible.

A State Department official said in a December 20 interview that the next step will be working out the details of implementation, noting that this process could be difficult because the code operates by consensus. Bolton said in his November 25 statement that “most...implementation work will concern the ICOC’s requirements for pre-launch notification of...ballistic missile and space-launch vehicle launches and test flights.” A meeting is “foreseen” for spring 2003, the Dutch Foreign Ministry said in a November 26 statement.

Bolton also said that Washington’s notifications and annual declarations “will be based upon the U.S.-Russian Pre-Launch Notification System, to be established in connection with the U.S.-Russian Joint Data Exchange Center.” In December 2000, the United States and Russia signed an agreement to exchange information on ballistic missile and space-vehicle launches, but it has not yet gone into effect.

Bolton expressed hope that the U.S.-Russian system could be “multilateralized” over the long term. He added that “the United States reserves the right in circumstances of war to launch ballistic missiles and space-launch vehicles without prior notification.”

**Scope**

Several countries that are considered proliferation risks, such as North Korea, Syria, Iran, India, and Pakistan, did not sign the code.

Richard Speier, a former Department of Defense official, said December 9 that this lack of participation by states of concern was a sign of the code’s weakness. Bolton argued, however, that it was “better to know who is truly serious about stopping the proliferation of ballistic missile technology” than to have members who cheat on their commitments.

Speier added that the agreement was defective, because it is weaker than the MTCR in many respects. He cited its failure to mention cruise missiles and its omission of a definition of “ballistic missiles capable of delivering weapons of mass destruction.” He also criticized the code for having controls on space-launch vehicles—which he argues are “interchangeable” with ballistic missiles—that are less stringent than the controls under the MTCR. These weaknesses will encourage countries to “venue shop” for the weakest regime, he said.

States refusing to sign listed various reasons. China argued that the transparency measures should be voluntary, according to a November 14 statement by Liu Jieyi, China’s director general of arms control and disarmament. India’s Ministry of External Affairs issued a statement November 15 saying the code fails to make a “proper distinction” between ballistic missile development and space-launch vehicles. A Pakistani official said in a December 20 interview that the code did not take into account
Islamabad’s security concerns and that it was negotiated in a “discriminatory” manner. Pakistan prefers to work through the UN Conference on Disarmament, he said.

The Danish official said that efforts were made to accommodate these concerns during negotiations, and the final text contains some changes from the previous draft. For example, the final code reaffirms subscribing states’ “commitment” to the UN charter, apparently as a gesture to countries that were concerned the process was taking place outside the UN forum. The official said that many states “hope for UN involvement at a later stage” but that the EU had decided to work outside of the UN process because it was deemed too slow and cumbersome.

Some minor changes were also made in language concerning space programs. For example, the new version omits language from the previous draft asserting that “similarities” exist between space-launch and ballistic missile programs.

The section discussing transparency measures added language specifying that the ballistic missiles in question are those “capable of delivering weapons of mass destruction.” China had pushed to make these measures voluntary for the subscribing states, but the Danish official said that the proposal was rejected because such measures would have “watered down the code.” He added, however, “On the other hand, the measures are of a rather general nature.”

Interestingly, Libya, which the United States considers a proliferation concern, subscribed to the code as a sign of its opposition to the proliferation of weapons of mass destruction, according to a December 11 statement from its official Jana news agency. At the code’s conference, Bolton accused Libya of producing biological weapons in violation of commitments under the Biological Weapons Convention.

**Source URL:** [https://www.armscontrol.org/act/2003_01-02/icoc_janfeb03](https://www.armscontrol.org/act/2003_01-02/icoc_janfeb03)