

“Security in an Age of Anxiety”¹: What Can Verification Offer?

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Introduction

Arms control and disarmament agreements are, by their nature, permeated with distrust. This is as true now as it was during the Cold War. The would-be violator needs to be deterred. The complier needs reassurance in such a sensitive area as national security. Both objectives seemed achievable during the Cold War, although on a very limited basis. Verification supplied some measure of reassurance and deterrence at opposite ends of the spectrum for many years of arms control agreements. But neither reassurance nor deterrence is fully relied upon in the post–September 11 world, nor can they be. Therefore, the task of verification has become far more complex and demanding, throwing the entire notion of effectiveness of arms control and reduction regimes into question.

These functions—reassurance and deterrence—remain critical, but they function in very different ways since the end of the Cold War. The United States has not yet made the shift to a world that it dominates militarily, yet remains in a situation between war and peace with complex new security threats. Verification continues to rely on (1) technology, (2) intelligence, (3) cooperation, (4) the international law of treaties, and (5) politics, but these elements operate in a wholly different context today. One main difference is the question “who verifies”? As bilateral arms control agreements have diminished in number and importance, so has party verification. In a bilateral arrangement, each party was responsible for its own verification. In the shift to multilateral agreements, an external organization is likely to bear this responsibility—for example, the Organization for the Prohibition of Chemical Weapons (OPCW) of the Chemical Weapons Convention and the International Atomic Energy Agency (IAEA) that serves the Nuclear Proliferation Treaty. Reliance on an international organization has raised issues of objectivity and competence, and in fact has created a separate cause for concern and distrust among parties.

It is important to emphasize how the changed security landscape has caused adaptations in verification so that it might continue to provide both deterrence and reassurance in the new world order (or disorder). I will take these elements up one by one.

Reliance on Technology

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¹John Lord O’Brian, First Godkin Lecture, in *National Security and Individual Freedom*, (Cambridge: Harvard University Press, 1955).

Intelligence: The ability to detect

Intelligence has always been relied on to detect “cheating” and to call the defecting party on it. In the era of hostility between the United States and the Soviet Union, intelligence was primarily provided by national technical means (NTM), with cost being no object. Now that the threats are multiple, smaller, and far more difficult to detect and reliance on satellites is accordingly reduced, reliance on human intelligence looms larger in importance. Judgment in interpretation is equally significant. Evidence of violation often means piecing together odd bits of information. This is particularly true of biological weapons (BW) and chemical weapons (CW) where dual-use technology could mislead in either direction—of false accusation or missed dangerous activity—for example the pharmaceutical plant in Sudan bombed by the United States under President Clinton.⁷ Unfortunately, the state of our “humint”, or human intelligence, has been justly criticized,⁸ and even though the intelligence services have undergone structural reform, there is little satisfaction with the access of human intelligence to the areas of greatest concern—North Korea and Iran.⁹

Cooperation

During the Cold War, cooperation between the two superpowers was limited and stylized—almost a minuet of relationships based on carefully developed theoretical underpinnings of mutually assured destruction (MAD). The parties agreed to neither attack the NTM satellites of the other nor to engage in deliberate concealment measures.

The various SALT and START agreements, beginning in 1972, provided reductions that were later overseen by periodic meetings of negotiators or the ongoing Standing Consultative Committee (SCC) in which it was hoped that ambiguities would be clarified. The most conspicuous example was whether the Krasnoyarsk radar was a violation of the ABM Treaty. To some observers, it seemed to form the basis of a nationwide detection system outlawed by that Treaty. Access to the classified minutes of the SCC has convinced me that during the Reagan administration, little cooperation and much

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⁷ In response to the 1998 bombings of U.S. embassies in Kenya and Tanzania, President Clinton authorized Operation Infinite Reach, a U.S. cruise missile strike on alleged terrorist bases in Afghanistan and Sudan. Missiles launched from the Red Sea struck the Al-Shifa pharmaceutical factory, a facility that the U.S. claimed to have assisted Osama bin Laden with the embassy attacks, as well as help build chemical weapons.

⁸ National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report* (New York: W.W. Norton & Company, 2004), 407–418.

⁹ National Commission on Terrorist Attacks upon the United States, *Monograph on Terrorist Financing and Monograph on 9/11 and Terrorist Travel*, August 21, 2004, <www.9-11commission.gov>. The House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence, *Report of the Joint Inquiry into the Terrorist Attacks of September 11, 2001*, 107th Congress, 2d Session, S. REPT. NO. 107-351, H. REPT. NO. 107-792, December 2002, <www.gpoaccess.gov/serialset/creports/911.html>.

finger pointing characterized those meetings.¹⁰ Noncompliance reports to Congress during the Reagan era focused on minor technical issues. The SCC was used to express “gotchas” as a deterrent to cheating. In fact, the greatest value of the SCC was probably the ongoing dialogue, as stilted as it was. The “hot line” was another effort at cooperation to avoid disaster.

These limited mechanisms for cooperation were probably not adequate to the situation. In fact, deterrence was provided by the systems themselves, far more than the verification process. Neither party fully appreciated the magnitude of a miscalculation. Both continued to assume automaticity of the restraints in place. Actual risk was no doubt higher than anyone realized. Nevertheless, from time to time there were some fairly honest, frank discussions and even negotiation breakthroughs based on a degree of trust. But the famous “Walk in the Woods” in 1982, between the nuclear negotiators, Paul Nitze and Soviet Ambassador Yuli Kvitsinsky, though memorialized in theatre, was rejected by higher levels of both governments.¹¹

On-site inspection did not take place until close to the end of the Cold War. As indicated, the United States had insisted on extensive on-site inspection for many years, but the Soviets resisted. In 1986, General Secretary Gorbachev indicated a change of position and went further towards challenge inspections than the United States was prepared to accept. The Intermediate-Range Nuclear Forces Treaty (INF) provided on-site inspection provisions, including baseline data, perimeter, closed-out facilities, and short-notice inspections. START I continued this trend. As the political climate warmed, the obstacles and stalling devices on both sides diminished considerably.

The awareness of the need for deep cooperation that the climate of suspicion made impossible is not new. In fact, it was the belief that no technical surveillance could possibly overcome Soviet cheating that led arms control opponents to reject new treaties and attempt to terminate existing ones.¹² Reliance on new and more sophisticated weapons systems was believed to be safer, despite the arms spiral they caused. Those who favored some degree of arms control pushed for more intrusive arrangements to increase reassurance. As the climate began to thaw, they succeeded. Nevertheless, nuclear deterrence has remained a major factor in the balance between the two superpowers.

In the post–September 11 world, both reassurance and deterrence have been eroded. The kind of deterrence that existed between the United States and the USSR is not

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¹⁰ Antonia Handler Chayes and Abram Chayes, “Policy Focus: Arms Control Verification Reconsidered,” *International Security* 14(4) (Spring 1990).

¹¹ In order to break the stalemate during the 1982 intermediate nuclear missiles negotiations in Geneva, Paul Nitze took Soviet Ambassador Yuli Kvitsinsky aside for a “walk in the woods” outside Geneva to negotiate arms reductions.

¹² Abram Chayes and Antonia Handler Chayes, “Testing and Development of ‘Exotic’ Systems under the ABM Treaty: The Great Reinterpretation Capers,” *Harvard Law Review* 99(8) (June 1986).

accomplish far less reassurance than existed in the bipolar world. That trade-off has been particularly unattractive to the United States, as shown both in its actions during the early phase of implementing the Chemical Weapons Convention and in its rejection of the biological Weapons Protocol, discussed below.

The United States, having pushed for intrusive verification, now rejects the degree of cooperation that would increase its effectiveness, based in part on jeopardy to trade secrets, and in some instances on national security grounds. This is, of course, echoed by other states, especially Russia and China, even though the claims made do not always stand up to careful analysis.

The question then becomes whether the adequacy of verification is worth the risk of openness in a world where so much cheating is possible. The most frightening new element is the existence of nonstate actors who mean to do harm, who seek access to WMD, who are not constrained by norms, and with whom cooperation is impossible.

If treaties cannot provide adequate reassurance through verification, is the answer to avoid treaties altogether and rely on intelligence? That has certainly not proven effective with regard to states as different from each other as Sudan and Iraq. Is it better to deepen cooperation within treaties and aim for universality among states? That is not a course that the United States has been following. Are there other techniques of interstate cooperation that can begin to tackle the problem of nonstate actors? Verification will never provide fully adequate reassurance, but the question that must be asked is whether national security is enhanced or decreased by arrangements that require intrusive verification, even if such arrangements cannot provide total reassurance. There are many approaches to cooperation, including cooperative verification that can be developed even in a world where mutual suspicion and lack of trust is the norm. But none of these involve scrapping international agreements, although the form and approach of such agreements may require alteration and innovation.

What can the International Law of Treaties offer?

It has become fashionable to denigrate treaty effectiveness in general, but this may be a baby/bathwater phenomenon when it comes to the value of arms limitation treaties. Despite the seeming simplicity and shallow commitments of the Cold War U.S.-USSR bilateral agreements, there were few violations of the provisions. And, as noted above, in the Gorbachev era, on-site inspection became a reality. Moreover, had the United States agreed to fewer inspections, the world might have had a comprehensive test ban treaty.¹⁵

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¹⁵ The Chemical Test Ban Treaty (CTBT), which prohibits all nuclear test explosions, was signed by 71 States, including all five nuclear-weapon States on September 24, 1996. To enter into force, the CTBT must be ratified by the 44 states that in 1996 possessed nuclear research or power reactors. To date,

Nevertheless, the special UN inspection team, UNMOVIC, was more correct in its findings than U.S. intelligence in Iraq immediately preceding the invasion of 2003. While special inspection powers were greater than those of regular IAEA inspectors at the time, it can be argued that the very presence of inspectors until 1998 contributed to Saddam Hussein's decision to rid Iraq of all WMD.

The IAEA has developed a far more aggressive Additional Protocol and may go further yet. The safeguards do not go all the way toward finding undeclared activities in declared sites and in undeclared sites. Resistance to no-notice inspections remains. It is an important start, but much more should be done to empower the IAEA.

The test should be whether an imperfect verification system weakens or strengthens national security. What is lost by submitting to increasingly intrusive verification measures? What is gained by refusal to engage in negotiations that will result in imperfect reassurance? For the United States, with its overwhelming military power, the benefits to be gained far outweigh the loss. Moreover, the support of measures that require cooperation in verification may encourage cooperation in other national security areas—as it has done with the Nunn-Lugar cooperative threat reduction program. It may encourage new thinking about ways in which nations, perhaps in regional groupings can work together to improve security. At the very least, such efforts may expose and even shame non-cooperative states. The result can be a net gain as, for example, the Chemical Weapons Convention (CWC) has been.

Early U.S. behavior under CWC was obstructive, abrasive, and not very cooperative. That has changed considerably in the last two years, but there is a lingering question whether the United States, by not setting a very good example, created a pathway for others to follow in resisting cooperation. Ironically, it was the United States that sponsored a ground-breaking approach to intrusive verifications in the mid-1980s—pushed by then Vice President George H.W. Bush and continued when he was President. However, it was not until the second Clinton term, in 1997, that the CWC was ratified.

Senator Jesse Helms insisted on 28 “conditions,” which were in effect reservations, although the treaty did not permit reservations. These conditions undermined the very robust verification scheme that the first President Bush had advocated. These included: 1) the right to refuse a challenge inspection on national security grounds; 2) the insistence that no samples collected could leave the U.S. soil; and 3) narrowing the types of industries that require declarations. These strictures could have caused many problems, and indeed the second condition has been a major problem. Fortunately the “no challenge inspection” provision has not been invoked—but the United States set a bad example early on. If we thought we could have a two tier system, we were mistaken. All we did was create opportunities for others to follow suit. The United States has to be aware that when it creates precedents, there will be followers. There were many examples of uncooperative behavior in a situation where a high degree of

cooperation was required—late reports, acting combatively with inspectors—fussing about tagging and weighing munitions. Russia and South Korea followed suit.¹⁸

Despite early obstructionism, there were and are now many successes in the CWC. First, the chemical industry, through its trade association the Chemical Manufacturers Association (CMA), had been very supportive with both technical advice and political support. As of February 28, 2006, 71,332 thousand metric tonnes of chemicals have been declared, of which 13,049 thousand metric tonnes have been destroyed. 19 The environmental problems are so great that it is necessarily slow.

The informal dispute settlement mechanism has been working. Despite U.S. concerns about past leadership, the OPCW has become more effective. However, it must be acknowledged that the CWC does not provide perfect security. The United States remains vulnerable to non-signatories, nonstate actors, and possible cheaters. But the list of possible miscreants is narrowed by virtue of the cooperative verification process that the treaty created.

The U.S. refusal to sign and ratify the Biological Weapons Protocol, which would have added intrusive inspection to the declaratory regime of 1972, leaves the United States more vulnerable because any cooperation is informal, bilateral, and purely voluntary. The opportunity to create and strengthen an international organization that might become effective, as the IAEA and OPCW have become, was nullified by the dramatic American exit from negotiations in July 2001.²⁰ According to Professor Matthew Meselson, the issue of exposure of trade secrets that persuaded the pharmaceutical industry to lobby against the treaty was far less of a problem than it seemed, as research facilities would have been exempt and by the time a drug is in production, it is commercially protected.²¹

President Reagan's "trust but verify" statement should have led to greater cooperation, but it has not done so. Closing down in the name of national security not only forecloses opportunities for cooperation with respect to security, but also has a negative effect on the potential for solving problems that are truly global in nature. If the United States is perceived as arrogant and dismissive of international treaties, we can expect a lack of

¹⁸ Much of this analysis is based on an excellent unpublished 2004 MALD thesis by Danielle Tarin, titled, "The United States and the Chemical Weapons Convention: Exemplifying American Exceptionalism in Treaty Behavior."

¹⁹ For more information see the website of the Organization for the Prohibition of Chemical Weapons at <http://www.opcw.org/>.

²⁰ After over six years of negotiations to develop a legally binding inspection protocol for the BWC, the United States rejected the draft protocol and walked away from the negotiations. For more information, see Ambassador Donald Mahley, U.S. Special Negotiator for Chemical and Biological Arms Control Issues, *Statement by the United States to the Ad Hoc Group of the Biological Weapons Convention States Parties*, Geneva, Switzerland, July 25, 2001 (accessed March 15, 2006); available from <http://www.state.gov/t/ac/rls/rm/2001/5497.htm>.

²¹ Discussion with Professor Matthew Meselson October 20, 2004.

cooperation and help when we ask for it, as has been the case in Iraq. Diffuse reciprocity and mimetic (or copycat) behavior is a result.

Moreover, domestic concerns will not permit the United States to become a much less open society. While some checks and balances have been weakened, the nation still rests on the Constitution. An open society, in the age of terrorism, remains vulnerable. American contempt for treaties and its contempt for international law have clear political consequences, as well as legal implications.

Politics

The politics of the Cold War were certainly unpleasant, and not as predictable as they sometimes seemed at the time, as noted above. The accounts of near nuclear confrontation over Cuba and even Korea remain hair-raising today. And yet this political situation had the virtue of clarifying the widely varying positions of the two antagonists. It had the virtue of simplicity in retrospect. The Cold War security "system", though imperfect, was developed over many years, which enabled to each side to learn in depth about the other side, to assess where the red-line was, and to create communication channels between the head of states to avoid World War III. Both sides realized to some extent, as Einstein famously said, "I know not with what weapons World War III will be fought, but World War IV will be fought with sticks and stones."

All that has changed now. The issues and the players are multiple and wholly unpredictable. There is enormous political fluidity. Alliance shifts are often issue based and may be temporary. As we have seen, the nuclear stalemate still exists in theory, but in practice seems irrelevant to the issues that face us today. The stakes may be lower than nuclear war but because of that, it is harder to maintain stability. The actors are unequal and elusive. There seems to be a lack of awareness that security is not a single game that is being played, but simultaneous games on many tables.

The United States is failing to act in its own political self interest by its inconsistency across many international areas. For example, the Nethercutt Amendment²² provided withdrawal of aid from nations that would not sign bilateral agreements with the U.S. promising not to join the International Criminal Court. If the United States is disappointed because Europeans are not supporting the rebuilding of Iraq, we should look to their reasons. We ignored European disappointment expressed over our refusal to participate further in a number of treaty areas—"unsigned" the ICC and undermining it, walking away from Kyoto and the troublesome area of climate change, refusing to sign the land mine treaty—not to mention opting out of the world court and refusal to ratify UNCLOS. American refusal to sign the Comprehensive Test Ban Treaty (CTBT) has eroded the potential of arms control treaties and further separated the nuclear "haves" from the "have-nots", thus increasing the skepticism about the value of the NPT. In all of

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²² President Bush signed the Nethercutt Amendment into law on November 14, 2005.

these areas, vigorous participation and well-thought out and constructive positions would increase cooperation where we need it. Such participation would not leave us open to "diffuse reciprocity" or subtle forms of retaliation across treaty areas. The problem of proliferation of WMD is not an American problem, even though we often act as if it were. It is far too global and far too difficult and intricate a problem to be left to the politics of a single nation—even the world's only superpower.

It may seem a very weak solution now to suggest that we retrace our steps and try to bolster the international legal regimes that have proven so fragile and so imperfect. But I do not see any alternative in an era of multiple players, where widespread cooperation and overlapping and contradictory perceptions must somehow be reconciled to get cooperative action.

Cooperation in verification is an interesting place to start because we have little security to lose and much to gain in the way of political reciprocity. Such an effort may foster new forms of cooperation that address current and emerging security concerns. Reducing proliferation of WMD requires a depth of cooperation and the slow and careful development of trust among multiple nations. But reducing the threat of proliferation will take more than cooperation. It will require imagination, diplomacy, and a willingness to make expenditures, particularly on behalf of nations that offer fertile soil to the development of terrorism. Cutting aid to them as the Nethercutt Amendment does is simply foolhardy. Vigilance is important, but we should not fool ourselves that we can create new technical means or new weapons systems that will solve the problems of proliferation or protect the United States against attack.