

A POSITIVE COMPLIANCE REGIME FOR THE INF TREATY

by Robin Ranger

In 1961 Fred C. Ikle predicted that "...a potential violator of an arms-control agreement will not be deterred simply by the risk that his action may be discovered. What will deter him will be the fear that what he gains from the violation will be outweighed by the loss he may suffer from the victim's reaction to it. [But]...democratic governments might experience serious political difficulties in reacting effectively to a detected evasion."

Since 1961, the U.S. government has failed to react effectively to what President Reagan has called a "pervasive pattern of Soviet noncompliance" with arms control agreements. As a result, the Soviets have enjoyed the gains from their violations without suffering significant, let alone offsetting, losses from the American victim's reaction to them. Yet, claiming that effective verification of Soviet treaty compliance is now attainable with on-site inspection, the Reagan Administration is all set to sign another agreement, a treaty governing intermediate-range nuclear forces (INF).

But absent any treaty provisions penalizing the Soviets for potential violations, they will once again lack any incentive to comply with it. If the Executive branch fails to stipulate such provisions, it will fall to the Senate to do so. Even though the Executive branch may resist what it will see as intrusion on its turf, both branches of government will need to collaborate in constructing what I propose to call a Positive Compliance Regime (PCR) for the INF Treaty. This PCR could then serve as the model for similar regimes for existing and future arms control agreements.

The two objectives of an INF Treaty Positive Compliance Regime would be:

1) **A Verification Objective:** to verify that the terms of the INF Treaty, as understood by the U.S. Executive and Legislature when (and if) it is ratified, are being strictly complied with by the Soviets or, if they violate it, to provide timely, accurate evidence of the nature and extent of the Soviet violations.

2) **A Compliance Objective:** to ensure that the U.S. will make effective proportional responses to Soviet violations of the INF Treaty, to either induce Soviet compliance or offset any Soviet gains from their violations.

The urgent U.S. need for a Positive Compliance Regime is underlined by the fact that for the last 65 years, since the 1922 Washington Naval Treaty, the democratic U.S. government has strictly complied with arms control agreements, while the totalitarian (and authoritarian) parties to them have violated their key

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provisions. For almost all of these 65 years the U.S. has failed to take any actions in response to these violations, failing either to enforce compliance by the violators or to offset their gains from violation.

For the U.S. to ratify an INF treaty lacking a Positive Compliance Regime would thus be to invite Soviet non-compliance, proving the truth of George Santayana's dictum that those who do not understand the lessons of history are doomed to repeat them. So how can the U.S. learn from the lessons of arms control history to construct a Positive Compliance Regime for the INF treaty and other agreements?

Verification Not Enough. The answer is by understanding that the key problem the open, democratic U.S. society faces in arms control agreements with the closed, totalitarian Soviet society is not in verifying the latter's violations--although this is still a much more difficult task than is usually realized--but in responding effectively to the evidence of violations with positive measures.

Just how serious this problem has become is clearer if its manifestation in the inter-war naval arms control agreements--the strategic arms control agreements of their day--is considered alongside its manifestation in post-war U.S.-Soviet agreements, particularly the 1972 ABM Treaty. Once the nature of the compliance problems that democratic societies face in arms control agreements is properly understood, the five components of a Positive Compliance Regime can be set out and the chances of its success assessed.

Past Compliance Policy Failures I: The Inter-War Years

I have analyzed the inter-war naval arms control experience in a study for the office of the Assistant Secretary of Defense for International Security Affairs and summarized the results in an article in *The Washington Quarterly*, Summer 1987. Three specific examples from this experience vividly illustrate how democratic governments will, for a variety of political and bureaucratic reasons, try to reject even the most persuasive evidence of violations and refuse to react to proved violations. Indeed, in one of these cases the violation was proved by on-site inspection (OSI).

Brazen Violation. The government in question was that of Great Britain. The first failure of British compliance policy, or more accurately their failure to develop a compliance policy, came in 1935. Prime Minister Stanley Baldwin's government reacted to Hitler's overt violations of the imposed arms control provisions of the 1919 Versailles Treaty by rushing to conclude the 1935 Anglo-German Naval Agreement (AGNA). During its negotiation the Reichsmarine informed the British that the last two "pocket battleships" Germany was building were actually battlecruisers which egregiously violated the treaty's established limits. Winston Churchill was amazed that "In the face of this brazen and fraudulent violation of the Peace Treaty, carefully planned and begun at least two years earlier (1933), the Admiralty actually thought it was worthwhile making an Anglo-German naval agreement."

Churchill would have been even more amazed if he had known just how big this brazen violation was--Hitler's two battlecruisers were a whopping 320 percent over the treaty's displacement limit, giving the Fuehrer a major military gain from his unpenalized violation.

The second British compliance policy failure followed hard on the heels of the first. In 1936 Hitler laid the keel of the famous battleship *Bismark*. Although technical data provided by the Germans purported to show that *Bismark* and her sister-ship *Tirpitz* were within treaty limits, the German section of the Admiralty's Naval Intelligence Division (NID) seriously questioned this claim because it was not technically credible. But the NID's Director and the Director of Plans, who had been heavily involved in the negotiations for the AGNA (which he advocated) insisted that the *Bismark* complied with the treaty limits, as did Hitler's pocket battleships and battlecruisers. They preferred to trust Admiral Raeder, Head of the Reichsmarine, who "...categorically denied that Germany is violating" the AGNA. Unfortunately for the British, Admiral Raeder was lying!

Lesson from History. Germany's two battleships each violated the agreement's limits by a massive 20 percent, further increasing the Fuehrer's gains from arms control violations. As a leaked memorandum from Secretary of Defense Weinberger to President Reagan reportedly noted, "From small German violations, great battleships grew."

The third British compliance policy failure also came in 1936 when they obtained perfect proof of major Italian violations of the 1922 Washington Naval Treaty. Mussolini had built seven "treaty" heavy cruisers, one of which, *Gorizia*, suffered an accidental explosion and put into Britain's Gibraltar dockyard for repairs. As the Royal Navy's official historian noted:

..."careful measurement" revealed that, as had long been suspected, her displacement was at least 10 percent higher than the 10,000 tons permitted by the Washington Treaty...the CID considered making a protest...but the committee [of Imperial Defense] was anxious not to do anything which might vitiate the current attempt to achieve a rapprochement with Italy, and to obtain her accession to the 1936 London Naval Treaty. After a great deal of talk nothing at all had been done...and the matter was...dropped.

Bureaucratic Power. These three British examples show that, without a Positive Compliance Regime, it is virtually impossible for a democratic government to overcome the almost insurmountable political and bureaucratic obstacles to accepting the evidence of arms control violations and to reacting effectively to violations. Lest anyone be tempted to make the fatal mistake of underestimating the power of the arms control bureaucracy then (or now), they should remember Albert Speer's macabre testimony to bureaucratic power, unearthed by Robert Nisbet. Reichsfuehrer Hitler was "...held at bay...by a single department of his own government." The bureaucracy denied former Corporal Hitler's claim to an increased pension for his World War I service.

Given the interwar British failure to develop an effective compliance policy it is not surprising, although depressing, to find a similar U.S. failure in postwar arms control agreements, including in, it seems, the proposed INF Treaty.

Past Compliance Policy Failures II: The Postwar Era

The extensive failure of U.S. compliance policy has just been summarized by Senator James A. McClure (R-Idaho), so let me urge you to read his clear explanation of "The Need for an Arms Control Compliance Policy " (*The National Security Record*, November 1987). He summarizes the sorry U.S. experience thus:

◆◆ President Reagan has issued five reports over the past four years providing a clear picture of a continuing pattern of Soviet violations of the arms control agreements it has signed with the U.S.

◆◆ In its report of December 1983, the President's General Advisory Committee on Arms Control and Disarmament concluded that the Soviet Union has indeed sought to gain "military advantage through selective disregard for its international arms control duties and commitments."

◆◆ Reagan's decision to discontinue U.S. compliance with SALT is the only compensatory measure taken in recent history by any American president in reaction to violations of an arms control agreement.

But the U.S. response has been limited to the deployment of cruise missiles on 180 B-52s and the retention in service of Poseidon missile submarines. Bizzarely, the Democratic majorities in the House and Senate are now nullifying these compensatory measures by amendments to the Fiscal Year 1988 Defense Appropriations Bill. This sends the Soviets a signal that they will not suffer any losses for existing and future violations of the arms control agreements these same Democrats claim to support.

Gorbachev Admits Violation. The serious political difficulties the Reagan Administration has experienced in implementing its Responding to Soviet Violations Policy (RSVP) are exemplified by the Soviet's Krasnoyarsk ABM radar. This September it was subjected to an unprecedented, albeit still partial, on-site inspection by three U.S. Congressmen. They confirmed the existing evidence provided by U.S. National Technical Means (NTM) of verification, proving that the Krasnoyarsk radar violates the 1972 ABM Treaty's ban on this type of radar at this location. There is now a complete, bipartisan consensus behind this finding of a clear, major, militarily significant Soviet violation. The Executive says Krasnoyarsk is a violation; the Legislature says Krasnoyarsk is a violation which should be dismantled (the Senate by 93 to 2 votes and the House by 428 to 0); even Mikhail Gorbachev says that Krasnoyarsk is a violation, by declaring a nominal moratorium on its construction on October 23, 1987. So what has the U.S. done about this violation? Nothing!

This U.S. failure to respond effectively to this Soviet violation was recently confirmed by Secretary of State George Shultz in a revealing exchange with CBS's Leslie Stahl, who asked: "Well, what do we do about it [Krasnoyarsk]?" Secretary Shultz answered only: "We tell them that this is a violation."

Since words have never hurt the Soviets, a Positive Compliance Regime would suggest that the U.S. make a two-part response to Krasnoyarsk and associated Soviet ABM Treaty violations. First, insist that the Soviets dismantle all their illegal

ABM radars within one year or the U.S. will terminate the ABM Treaty. Second, exercise the U.S. treaty option to reactivate its ABM site at Grand Forks, North Dakota with 100 ERIS-type non-nuclear interceptors at a total ten-year cost of under \$4 billion.

To say that the U.S. could not contemplate such action because of the political objections is, of course, to say that it is politically impossible for the U.S. to enforce Soviet compliance with existing arms control agreements or to enter into any new ones.

A Positive INF Treaty Compliance Regime

The crucial failure of U.S. compliance policy has been the failure to include, as part of arms control agreements, provisions that either enforce compliance, or impose penalties for violating their terms. While much of the SALT debate centered on U.S. verification capabilities, subsequent Soviet behavior has shown that U.S. verification of their treaty violations cannot ensure Soviet compliance. Hence, verification is necessary, but not sufficient.

Compliance Defined. The basic equation is simple: for the U.S., verification (of Soviet compliance or noncompliance) does not equal compliance; only verification plus an effective compliance policy equals compliance--or a means of offsetting the Soviet violator's gains. Without explicit measures that impose severe costs or penalties for violation of a treaty's provisions, a treaty is not so much a good faith contract as a hollow promise, recalling Samuel Goldwyn's remark about verbal agreements not being worth the paper they were written on.

Having adequate verification without a Positive Compliance Regime is like having laws without law enforcement. Adopting a Positive Compliance Regime insures that, whatever the terms of the treaty itself, the Soviets will not be able to violate the terms without incurring certain costs. If such a regime is not adopted as part of the agreement, or at least as part of the agreement's ratification as a formal treaty, the U.S. will only be creating new arms control problems. As Senator Malcolm Wallop (R-Wyoming) and Angelo Codevilla have rightly said in their new book, *The Arms Control Delusion*:

...the president and his highest appointees know the difference between verification and compliance. Yet they refuse to acknowledge it, because if they did, they would also have to acknowledge that they have no more means and no more will to enforce a new arms control agreement than they have to enforce old ones. Hence they, like their predecessors, are merely creating problems for their successors.

To avoid such problems the INF Treaty must be accompanied by a Positive Compliance Regime, requiring the U.S. to take the following five actions:

- 1) **Arrive at a clear, unambiguous U.S. understanding** of which U.S. and Soviet systems are to be eliminated, how the elimination is to be accomplished, and how verified. As a corollary, the U.S. must establish its understanding of the kinds of Soviet activities it would view as violating or circumventing the treaty's limits, and

also assuring a broad range of potential responses. These understandings could follow the precedent the Senate set in the SALT II ratification debate, by attaching its plain language understandings of the treaty's provisions to its approval of ratification. For example, the U.S. might determine that any testing or deployment of the SS-20 follow-on missile (the SS-20 Mod 2) would halt U.S. INF reductions. Similarly, the U.S. must establish its understanding of which U.S. activities are and are not permitted under the treaty--for example, the U.S. might determine that it was free to deploy as many nuclear-armed submarine-launched cruise missiles as it wished on U.S. and allied ships.

2) Provide funding for the defense programs needed to protect U.S. and allied security interests if the Soviets comply with the treaty, and assure funding of those activities deemed necessary to respond effectively to Soviet violations. Programs in the former category might include modernization of the remaining Theater Nuclear Forces in NATO, while programs in the latter category might include rapid deployment of two non-nuclear systems. One would be the HOMS theatre-ABM system which uses the same launchers as the 6,000 Patriot surface-to-air missiles being deployed in NATO-Europe and can intercept all Soviet theatre ballistic missiles with ranges over 70 kilometers. The other would be ground-launched cruise missiles with ranges over 500 kilometers which the Soviets have persuaded the U.S. to ban, on dubious verification grounds, in the INF Treaty.

3) Make U.S. implementation of each stage of the INF reductions conditional on a Joint Executive and Legislative determination that the Soviets are in compliance with the treaty. Failing this determination, further U.S. reductions would be halted while the question of potential Soviet noncompliance was investigated by both branches of the U.S. government.

Since the U.S. Senate already requires the President to submit an annual report on Soviet compliance with arms control agreements, in classified and unclassified versions, this report could also be required to cover Soviet compliance with the INF Treaty. But there would be one crucial change: the report would have to be accompanied by a presidential certification of Soviet compliance with the treaty. If the Soviets were found to be in compliance, then this finding would still have to be endorsed by a two-thirds majority of the Senate. If the Soviets were found not to be in compliance by either the President or the Senate, or both, then the U.S. would halt its INF reductions while a full investigation was held into the nature and extent of the potential Soviet violations.

4) Establish a Senate Select Committee on Arms Control Compliance Policy drawn from the membership of the Armed Services, Intelligence, and Foreign Relations Committees. This would monitor Soviet compliance with the INF Treaty (plus existing and future agreements), as well as U.S. implementation of its safeguards against Soviet violations.

Such a committee would build on the precedent established by the late Senator Henry M. (Scoop) Jackson. He created what was, in effect, a prototype positive compliance regime for the 1963 Limited Test Ban Treaty (LTBT). First, he persuaded the Senate Armed Services Committee to make its support of the LTBT the Kennedy Administration had negotiated with the Soviets conditional on the

Administration's implementation of a four point safeguards program. This program had been developed by the Joint Chiefs of Staff to protect U.S. national security interests under the LTBT, and to provide for effective U.S. responses to Soviet violations of it, reflecting the recent (1961) U.S. experience with the Soviet violation of their commitment to a nuclear test moratorium. To obtain Senate advice and consent to ratification of the LTBT, a reluctant Administration agreed to implement the Joint Chiefs' safeguards program. Second, to oversee their implementation, Senator Jackson had the relevant government agencies submit an annual safeguards report, initially to the Senate Armed Services Committee and later to a subcommittee on Nuclear Test Ban Safeguards.

5) **Agree to resolve questions about potential Soviet violations** of the INF Treaty and the appropriate U.S. responses to them through as public a debate as security needs permit. Determining that a violation has occurred, and must be responded to, is ultimately a political decision that must be made by both the Executive and the Congress. This decision should be made after an informed, public U.S. debate. It should not be made after confidential discussions with the Soviets in the SALT Standing Consultative Committee (SCC), in which they usually deny U.S. charges of noncompliance. The Administration then accepts these denials and states that questions of Soviet violations are being "resolved" in the SCC.

The U.S. arms control bureaucracy's behavior is so similar to that of its British predecessor in trying to sweep the evidence of violations under the rug that this is a powerful additional argument for an open debate on these issues--the State Department's Policy Planning Council in May 1987 recommended ignoring or minimizing past Soviet arms control violations to gain Senate support for the INF Treaty. Such an approach is incompatible with a positive compliance regime.

Making a Positive Compliance Regime Work

The root cause of the U.S. inability, to date, to enforce Soviet compliance with arms control agreements has been the one characterized with brutal honesty by the 17th century political philosopher Thomas Hobbes: "Covenants without swords to enforce them are but words."

An INF Treaty without an accompanying positive compliance regime will be but words. As Senator McClure puts it: "If we have no compliance policy and the Soviets know that the United States lacks the will to respond to their violations, all the spy satellites and on-site inspections [OSI] in the world will be meaningless."

Even OSI may do much less for the verification half of the U.S. verification plus compliance enforcement equation than expected. A recent Central Intelligence Agency report concluded that "For...the rest of this century there will be uncertainties associated with any arms control treaty limiting mobile missiles. Even with [OSI] only very modest improvements in counting deployed mobile missiles seem likely."

Fortunately, though, there is another precedent for an effective U.S. compliance policy besides that set by Senator Jackson. In the 1930s President

Franklin D. Roosevelt, Representative Carl Vinson (Chairman of the House Naval Committee), and the U.S. Navy established and implemented a safeguards program, including pre-programmed proportional responses, to deal with Japan's breakout from naval arms control limits. This program included such useful devices as treaty escalation clauses the U.S. could invoke to protect her interests and enabling legislation like the FY 1937 Naval Act's provision for "Conditional capital-ship replacement." This was "...to be undertaken only in the event that the President determines...that capital-ship-replacement construction is commenced by any of the other signatory powers..." to the 1936 Naval Treaty. FDR so determined and the two battleships were built.

The bottom line is that making a positive compliance regime work will not be easy, but it can be done. Without such a regime the U.S. will have no means of enforcing Soviet compliance with an INF Treaty. If the Soviets violate this treaty the way they have violated other arms control agreements, and for the same reason--the U.S. failure to react effectively to their violations--the situation will be what Yogi Berra described as "*Deja vu* all over again."

