



National Institute for Public Policy

# SECURING COMPLIANCE WITH ARMS CONTROL AGREEMENTS



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## Executive Summary

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The study of arms control over the past century is replete with hundreds of books and reports which examined the need for, negotiation of, verification of, and continuation of arms control treaties and agreements. The literature is somewhat less voluminous on the study of compliance with arms control treaties, and smaller still with studies that explain why countries or leaders choose not to comply.

This report goes one step further by not only explaining why some countries or leaders chose not to comply, but also what lessons we have, or we should have, learned from these historical case studies to apply to today's compliance concerns. Currently the U.S. government is tracking Russian noncompliance with the Intermediate-Range Nuclear Forces (INF) Treaty, Syrian noncompliance with the Chemical Weapons Convention, the danger of Iranian noncompliance with the Joint Comprehensive Plan of Action (JCPOA), and North Korean noncompliance with multiple U.N. Security Council resolutions. Each compliance concern is unique in that the actors, motivations, overtness, and security implications all differ; but the U.S. approach to each could benefit from incorporating the lessons learned and recommendations in this report.

The cases studied in this report vary in antagonists, interests and objectives of the parties, time periods, agreements transgressed, military capabilities subject to limits, types of violations, evasion tactics, enforcement measures, means to resist cheating penalties, and outcomes. One case deals primarily with conventional forces, two with weapons of mass destruction (WMD) programs, and one with a non-offensive capability (an illegal radar). The cases selected are historical, the violations are not in dispute, and the time periods involved extend over years, which allows changes in violator-enforcer interactions to be followed. While none of the cases is current, one – on North Korea's violations of arms control obligations – provides essential background to the crisis presented now by North Korea's nuclear and ballistic missile advances.

The four case studies are:

1. *Allied Powers versus the German violations of the Versailles Treaty disarmament clauses, 1919-1935.*
2. *United States versus the Soviet Krasnoyarsk radar violation of the Anti-Ballistic Missile (ABM) Treaty, 1983-1993.*
3. *United States and others versus the Iraqi real and apparent violations of the United Nations Security Council (UNSC) Resolutions on WMD disarmament, 1991-2003.*
4. *United States and others versus the North Korean nuclear violations of the Nuclear Nonproliferation Treaty (NPT), the IAEA Safeguards Agreement, the 1992 North-South Denuclearization Agreement, the 1994 U.S.-North Korea Agreed Framework, the 2005 Joint Statement of the Six-Party Talks, and UNSC Resolutions, 1992-2009.*



At the conclusion of each case study, the authors answered the same set of 12 questions which allows for an easier comparison and contrast between the cases. The questions are as follows:

1. Did the character of the government committing the violation incline it toward breaching the agreement? (For example, authoritarian regimes – unaccountable, secretive, deceptive, byzantine, aggressive – may be prone to noncompliance.)
2. What did the violator hope to gain? What consequences did it anticipate? No response, with the violation undetected or unpunished? Penalties that would be acceptable in light of the expected gain?
3. Had the violator accepted the agreement willingly or under duress? Was acceptance of the agreement the result of a strategic decision or was it a tactical expedient?
4. Were there aspects of the agreement that increased the likelihood of violations? Were there deficiencies in verification capabilities that the violator could exploit?
5. Were the proscribed capabilities easy or hard to conceal? Could they be clandestinely obtained from third parties?
6. When detected, was the violation blatant or plausibly ambiguous? Were its consequences seen as serious or relatively unimportant?
7. Was the response to the violation undertaken by one or multiple parties? Were there differences within the government, or within and among the governments, responding to the violation? Were there differing assessments of the violation and possible responses? If so, what were the effects of these differences? If the response was unilateral in nature, was this a source of strength or weakness? If a number of states were involved, what were the advantages or disadvantages of a multilateral response?
8. What types of responses to the violation were considered or adopted? Inaction? Accommodation? Negotiation of a revised or new agreement? Diplomatic pressure? Retaliatory breach of another arms control constraint? Economic sanctions? Military improvements, threats, or action? How effective were those that were pursued?
9. If the response involved inducements as well as penalties, is there evidence suggesting that the combination was more effective than either alternative alone?
10. What tools and tactics were available to the violator to inhibit, fend off, or withstand a response? Which were chosen and why? What was their effectiveness?
11. Were there important asymmetries in the stakes and resolve between the violator and the enforcer(s) that had a significant influence on the outcome of the case?
12. On the whole, why did deterrence of the violation fail? Why did efforts to restore compliance succeed or fail?

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After answering these questions regarding each case study, the conclusions are as follows.

First, authoritarian regimes are more prone to noncompliance than democratic governments. They have little if any respect for the rule of law, are secretive, and unaccountable to anyone but themselves. They have absolute power over the government and population, and brook no dissent.

Next, governments are more likely to violate agreements that they are forced to accept. The Weimar Republic was democratic, but never accepted the legitimacy of the Versailles Treaty. Political leaders were either sympathetic to the military's determination to evade Treaty constraints, or too weak to resist in the light of popular support for the military.

Difficult though it may be to admit, countries that are thoroughly defeated in war may be more prepared to accept victors' demands than others. The likelihood of Iraqi compliance with the transparency obligations of the UNSC resolutions after the First Gulf War was low from the start, when Saddam Hussein remained in power. While Germany had a new, democratic government after World War I, the country had not been invaded, its infrastructure was intact, and much of its military leadership was still in place. As a result, the military leadership and a large proportion of the population refused to admit that Germany had been defeated or that Versailles was legitimate. Contrast West Germany after World War II, which readily accepted disarmament, Allied occupation, and the 1948 Basic Law (essentially the constitution), drafted at Allied insistence and heavily influenced by U.S. officials.

Asymmetries in stakes and resolve among the parties may be the most critical determinants of noncompliance. In three of the four cases analyzed in this report, the violator's stake in noncompliance generally was far greater than the enforcer's stake in compliance.<sup>1</sup> Germany in the 1920s wanted to restore national greatness. Saddam Hussein and Kim Jong-Il believed their regimes were at stake, and sought (temporary) compromise only when they were threatened militarily. On the other hand, Britain and France were simply tired of Versailles compliance enforcement by 1927, several UNSC members wanted after a few years to return to normal (and economically beneficial) relations with Iraq, and the United States moved from threats to inducements after the signature of the Agreed Framework. In the fourth case, the dynamics were quite different. The Reagan and George H.W. Bush Administrations' stake in demanding compliance with arms control agreements was initially just as strong as the Soviet Union's stake in retaining the Krasnoyarsk radar. Ultimately, U.S. resolve proved longer-lasting – although the Soviet Union might have remained more resistant if it were not for the change to the Gorbachev Government.

Three of the four cases demonstrate that where compliance is elusive – as with authoritarian regimes or those who accepted the agreement under duress – the most effective inducement may be the threat of military action, whether occupation or attack. Only in the Iraqi case, however, did two of the main parties, the United States and United Kingdom, follow through with actual invasion. While that certainly resolved the compliance issues, the price was enormous.

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<sup>1</sup> Iraq is only a partial exception to this finding. By invading Iraq in 2003, the United States, United Kingdom, Australia and Poland demonstrated a determination to restore compliance that was at least the equal of Saddam Hussein's commitment to noncompliance. However, the bulk of UN members opposed that action.

It may be stating the obvious, but compliance is generally easier to enforce for bilateral than multilateral agreements. The only successful case studied in this report is also the only purely bilateral one. U.S. Allies were skeptical about the seriousness of the Krasnoyarsk violation. If they had been parties to the ABM Treaty, it is extremely doubtful that they would have demanded – without wavering for over six years – that the radar be dismantled.

While the Versailles Treaty had many parties, only the United Kingdom and France were important to enforcement of the disarmament provisions. They were close allies, and few in number, yet in the 1920s, they disagreed more often than not on compliance issues – differences that the Weimar Government was able to exploit. During the next decade, they tended more to be in agreement, but in favor of inaction and appeasement.

The UNSC Resolutions on Iraq involved many states. Of the permanent UNSC members, only the United States and United Kingdom remained firm in demanding complete Iraqi compliance. There were also differences in this regard among the inspecting bodies. The last Executive Chairman of the UN Special Commission (UNSCOM) stressed noncompliance; so too, albeit to a lesser degree, did the Executive Chairman of the UN Monitoring, Verification and Inspection Commission (UNMOVIC). The International Atomic Energy Agency (IAEA) Director General emphasized compliance. It is difficult to know whether those differences resulted from differing views of how strictly to enforce the UNSC Resolutions, from Iraq's greater transparency on nuclear programs after Kamel's defection, or from a combination of the two.

North Korea's nuclear obligations were a hybrid, but primarily multilateral. The NPT, IAEA Safeguards Agreement and UNSC Resolutions involve most states in the world. The Agreed Framework was bilateral, but South Korea and Japan were critical to its implementation. The Six-Party Talks were obviously multilateral, but the United States led in both demands and concessions. The North Korean case fully demonstrates that a bilateral, or clearly U.S.-led, agreement by no means guarantees either compliance or a firm response to noncompliance.

Finally, deterring the violation of arms control agreements by a determined violator is difficult – and perhaps nearly impossible. One might argue that the case studies in this report are a skewed sample in this regard, because they all involve noncompliance. However, arms control agreements over the past 100-plus years that were never violated are rare indeed. The demilitarization of Germany and Japan were exceptions, but in both cases, the leadership and the population embraced that outcome only after the catastrophe of the Second World War. In addition, the Obama Administration continuously certified that Russia was in compliance with the New START Treaty, but also noted ongoing (i.e., not yet resolved) discussions with Russia on implementation issues.<sup>2</sup>

Fear of detection and response had some deterrent effect in the Weimar and Iraqi cases, but that was by no means complete. When discovered, the violators sought to appease the enforcers through partial compliance. The same was true of North Korea, although its compliance concessions were even more limited than those of Iraq or Weimar Germany. Finally, the likelihood of detection did not deter the Soviets from building the Krasnoyarsk radar; they simply assumed an acceptable response given their expectations of U.S. behavior.

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<sup>2</sup> Department of State, *Annual Report on Implementation of the New START Treaty*, January 2017, pp. 2-3, available at <https://www.state.gov>.

Colin Gray's "arms control paradox" may well be at work: "Arms control regimes worthy of the name are achievable only between states who do not need them. ... The motive to cooperate is overridden by the motive to compete. The arms control paradox argues that the reasons why states may require the moderating influence of an arms control regime are the very reasons why such a regime will be unattainable."<sup>3</sup>

## Strategies for the Future

The patterns of noncompliance and response observed in the four case studies analyzed in this report amply underscore the difficulty of securing compliance with arms control agreements. In no case were violations deterred or otherwise prevented. In only one was the violation resolved peacefully. In a second, violations were resolved – and full information discovered – only as a result of war. In a third, they have yet to be resolved. And in the fourth, the unresolved violations significantly contributed to the outbreak of World War II.

Following are recommendations for approaches to future arms control agreements, based on the patterns of noncompliance and response found in this study.

**First, determine the national interest to be served by the proposed agreement.** It is tempting to conclude that the best way to avoid noncompliance with arms control agreements or with obligations imposed by UNSC Resolutions is not to enter into them. Sometimes that will be an option. For example, it is questionable whether the United States derived significant national security benefits from the Interim Agreement, SALT II or the ABM Treaty. The military benefits, if any, were small; the political benefits of *detente* were dramatically reduced after the invasion of Afghanistan and Soviet violations of the agreements. In other instances, the agreement is in the national interest. That was certainly true at the time of the INF Treaty signature; it is open to debate whether that remains the case, given Russian noncompliance. In still other cases, the agreement may be necessary, especially to resolve or end a conflict peacefully.

Therefore, the first element of a strategy to secure compliance with arms control agreements must be a clear-headed analysis of whether the agreement serves the national interest. If it does not, the effort should not be pursued given the challenges and potential costs of noncompliance—no matter how politically popular it might be.

**Develop effective monitoring and verification provisions.** If a potential agreement passes the first test, the next task would be to prepare for noncompliance. Some agreements may not lend themselves to verification and will inevitably be violated, but might still be valuable for setting international norms. The Biological Weapons Convention is a good example. For most agreements, however, the Reagan Administration maxim of "trust but verify" should be amended, in light of the case studies covered here, to "verify but still don't trust." The party entering the agreement should carefully develop the monitoring, verification and prospective enforcement measures required to deter and detect any cheating, no matter how unlikely it might appear at the time. As an example, the INF Treaty is of indefinite duration. All U.S. and Soviet ground-based INF missiles were to be destroyed within three years of Treaty entry into force, and verification provisions were to continue for another ten years. At the time, ten years seemed adequate or

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<sup>3</sup> Colin S. Gray, *House of Cards: Why Arms Control Must Fail* (Ithaca, NY: Cornell University Press, 1992), p. 27.

better. That was shown not to be the case when the Russian violation was announced 15 years after INF verification ended.

In devising verification measures, a party should not assume that they can be weakened because of improved relations with the other party. The dramatic changes in U.S. relations with Russia – for the better and then the much worse – since the fall of the Soviet Union demonstrate how foolhardy that can be.

On-site monitoring may not be possible for some arms control instruments with adversaries, such as the UNSC Resolutions on North Korea since 2006. In those cases, every effort should be made to ensure that the resolution empowers member states to enforce its provisions, consistent with international law. For example, the September 2017 resolution passed after the sixth North Korean nuclear test strengthens earlier UNSC provisions encouraging all states to interdict ships carrying cargo suspected of violating the resolution.<sup>4</sup>

**Understand the determination and motives of the potential violator.** The experiences with the Versailles Treaty and the Iraq cease-fire resolution demonstrate that it is particularly difficult to ensure compliance by a party that is forced to accept a post-war agreement, but has not been destroyed in the war. This is not to argue that war aims should always include destruction and regime overthrow, but that the compliance implications should be carefully considered – at a minimum before concluding the conflict, and in devising the peace settlement or armistice arrangements. The threat of military occupation was the most effective sanction in Germany for the short term, but may have fueled anti-Versailles resentment over the longer term. Charles Duelfer argues that the UNSC’s inability to make military threats against Iraq seriously weakened the inspection system. Yet the Iraqi case study in this report found that Operation Desert Fox, the 1998 military operation by the United States and United Kingdom in response to Iraqi obstructionism, was counterproductive. Perhaps the most effective approach would be to require armed military escorts for post-conflict inspectors, with authorization to use force if required. As a last resort, national rights to use force to compel compliance should be recognized.

**Understand the costs and benefits of multilateral versus bilateral agreements.** The case studies in this report also demonstrate that it is more difficult to secure compliance with multilateral agreements than with bilateral. In some instances, such as the Iraq cease-fire resolution and the UNSC resolutions on North Korea, there is no alternative to multilateral approaches. In others such as the Six-Party Talks, a multilateral agreement might be preferable, in order to involve all of the states required to enforce compliance. If a multilateral agreement is either preferable or necessary, compliance enforcement might be improved with carefully-developed rules for inspectors’ rights, responsibilities and decision procedures. If international commissions analogous to UNSCOM, UNMOVIC and the IAEA’s Iraq Nuclear Verification Office (INVO) are created to carry out monitoring, their leadership should be chosen carefully for expertise and dedication, not to satisfy political *desiderata* such as national representation. A new “lessons learned” look at UNSCOM, UNMOVIC and INVO might be in order.

**Identify in advance likely violations and potential responses** Further, the United States must consider, and decide to the extent possible, what violations might be most likely and what it would do if they occur. Such an effort might be both technically and politically difficult. For example,

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<sup>4</sup> UNSC, *Resolution 2375* (September 2017).

when the ABM Treaty was signed, an illegal ballistic missile early-warning (BMEW) radar was thought to be very unlikely because of the expected near-certainty of detection. Politically, a government might be reluctant to let it be known that it is preparing to respond to arms control cheating. Yet that would send an essential deterrent message to a potential violator. Moreover, given the noncompliance record so far, the United States Executive Branch might be compelled to undertake such advance planning before the Senate would give advice and consent to ratification of a new arms control agreement. Identification of likely violations and preferred responses would be especially difficult for multilateral agreements. Still, the UNSC provisions on interdiction are a start.

Moreover, the United States must be clear from the outset that it will respond decisively to arms control violations. If and when it does so, it must not establish red lines that it is not prepared to honor. Messages of intent to respond must be clear and credible to be effective.

In sum, the first U.S. goal should be to avoid arms control agreements that do not serve the national interest. If agreements are pursued, essential goals should be to establish the ability to deter noncompliance by the other party (or parties), to undertake effective responses to violations, and to enhance the chances of their successful resolution. An important vehicle to assist that effort would be to create an arms control “Red Team,” similar to – but with a broader focus than – one established by the Reagan Administration in 1982.<sup>5</sup> It is important to note that the Reagan Red Team was established fairly early in the Strategic Arms Reduction (START) and INF negotiations; the one recommended here would begin even earlier, with critical input into the decisions as to whether and how to pursue negotiations in the first place.

No foolproof strategy seems likely to deter, or to respond effectively to, all arms control cheating. However, we can seek to enter a new era of better securing compliance. Thirty years ago, the INF Treaty brought revolutionary change to verification. It is past time for another dramatic, positive change.

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<sup>5</sup> In 1982, a new National Security Council Arms Control Verification Committee was tasked with creating “a permanent ‘Red Team’ to challenge US verification capabilities, assumptions and policies. This team would anticipate how, in what ways, and for what purposes the Soviets might try to avoid compliance with the provisions of arms control agreements.” The White House, *National Security Decision Directive 65: Establishment of National Security Council Verification Committee*, November 10, 1982, declassified/released on May 17, 1991, p. 3, available at <https://reaganlibrary.archives.gov>.



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## Chapter One: Introduction

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### The Problem of Noncompliance

Violations of arms control agreements are a problem of the past, the present, and almost certainly the future. Yet the problem of noncompliance has often received less attention and analysis than that devoted to the agenda, proposals, negotiations, and verification for arms agreements. Relatively little attention has been paid to the likelihood and consequences of noncompliance, for either the violator or the enforcer.

Four noncompliance issues currently are receiving attention in discussions of U.S. and international security. The Obama Administration charged Russia with "violation of its obligations under the INF [Intermediate-range Nuclear Forces] Treaty not to possess, produce, or flight-test a GLCM [ground-launched cruise missile] with a range capability of 500 km to 5,000 km, or to possess or produce launchers of such missiles." Obama administration officials repeatedly told their Russian interlocutors that work on the noncompliant system must end and that any missiles and launchers must be eliminated. The Russians failed even to acknowledge that the illegal cruise missile exists. In 2015, the Obama Administration was considering "potential economic measures" and "a broad range of military response options" to counter the Russian violation,<sup>6</sup> but no action was taken, at least publicly. The Trump Administration has decided to pursue a nuclear-armed sea-launched cruise missile (SLCM) in part to respond to Russian violations of the INF Treaty. It has also stated that: "Concluding further agreements with a state in violation of multiple existing agreements would indicate a lack of consequences for its non-compliance and thereby undermine arms control broadly."<sup>7</sup>

Second, in May 2015, three U.S. officials—the Deputy Secretary of State, United Nations (UN) Ambassador, and Ambassador to the Organization for the Prohibition of Chemical Weapons (OPCW)—accused the Assad regime of using chlorine gas against its opponents in the Syrian civil war. Following that, Syria used sarin in an attack in April 2017 and launched a major chemical attack in April 2018. Chemical use violates the Chemical Weapons Convention (CWC), to which Syria acceded in October 2013.

Third, the danger that Iran will violate the Joint Comprehensive Plan of Action (JCPOA) limiting its nuclear capabilities has been one of the central issues in the congressional and broader public debate over the agreement. Despite assurances from the Obama Administration that the verification regime related to the JCPOA and the threat of "snap-back" sanctions would secure Iranian compliance, many in the House and Senate opposed the agreement, in part because of the belief that it leaves many opportunities for cheating by Tehran.<sup>8</sup>

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<sup>6</sup> Brian P. McKeon, Principal Deputy Under Secretary of Defense for Policy, "Prepared Statement," in House Committees on Armed Services and Foreign Affairs, *Russian Arms Control Cheating and the Administration's Responses*, Joint Hearing, Serial Nos. 113-238 and 113-132, 113th Cong., 2d sess. (Washington, DC: Government Publishing Office, 2015), pp. 17-19.

<sup>7</sup> Office of the Secretary of Defense, *Nuclear Posture Review* (Washington, DC, February 2018), p. 55, p. 74.

<sup>8</sup> See, for example, hearings conducted by the Senate Committee on Foreign Relations, available at <http://www.foreign.senate.gov>, and the House Committee on Foreign Affairs, available at <http://foreignaffairs.house.gov>.



Finally, and of most immediate concern, are the rapid North Korean advances in ballistic missile and nuclear weapons capabilities, in violation of numerous United Nations Security Council (UNSC) resolutions. On July 3 and July 28, 2017, North Korea tested an intercontinental-range ballistic missile (ICBM). On September 3, 2017, the regime conducted its sixth nuclear test. The test's unprecedented power gave credence to Pyongyang's claim that it was a hydrogen bomb. North Korea also conducted in 2017 a record number of tests of short- and medium-range ballistic missiles.<sup>9</sup>

Current compliance problems are unlikely to be readily resolved, and further such challenges will almost certainly confront the United States in future years. Arms control agreements place limits on certain aspects of arms competition, but not on the underlying rivalries, ambitions, and insecurities that motivate states to seek military advantage through, among other means, cheating on agreements. Also, it may be easier to hide violations, or at least to make them appear ambiguous, than to find them. Moreover, deterrence of violations and enforcement of agreements require determination, domestic and international support, practicable courses of action, and readiness to accept the costs and risks of counters to noncompliance. Given all that, violators may calculate that the other party or parties to an agreement lack(s) the will or wherewithal to respond effectively. Failure to prevent or respond to violations not only could place the United States and our allies at a disadvantage and potentially in danger, but also could weaken arms control as an instrument for decreasing the likelihood of conflict, limiting the destructiveness of war, and reducing the burden of defense.

Noncompliance usually is treated in relation to a particular agreement rather than in broader terms, with reference to verification rather than counteraction, and after rather than before violations take place. In contrast, this study looks to history for lessons that have relevance for various types of agreements, that bear on ways to secure compliance and not simply identify noncompliance, and that can help to shape agreements and accompanying measures with greater resistance to, and resilience against, violations. It aims to further understanding of circumstances that enable or inhibit cheating, measures that serve as deterrents to cheating, tactics used by violators as well as other factors that hinder enforcement actions, and ways to compel violators to comply with agreements.

## **The Case Studies**

The following chapters examine four historical cases through the lens of a common set of questions. The cases vary in antagonists, interests and objectives of the parties, time periods, agreements transgressed, military capabilities subject to limits, types of violations, evasion tactics, enforcement measures, means to resist cheating penalties, and outcomes. One case deals primarily with conventional forces, two with weapons of mass destruction (WMD) programs, and one with a non-offensive capability (an illegal radar). The cases selected are historical, the violations are not in dispute, and the time periods involved extend over years, which allows changes in violator-enforcer interactions to be followed. While none of the cases is current, one

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<sup>9</sup> See Arms Control Association, *Chronology of U.S.-North Korean Nuclear and Missile Diplomacy*, September 3, 2017, available at <https://www.armscontrol.org>.

– on North Korea’s violations of arms control obligations – provides essential background to the crisis presented now by North Korea’s nuclear and ballistic missile advances.

Following are brief summaries of the four case studies:

1. *Allied Powers versus the German violations of the Versailles Treaty disarmament clauses, 1919-1935.*

The Weimar Republic, the post-World War I democratic German Government, had little choice but to sign the Versailles Treaty, which was negotiated by the victorious Allies (especially the United States, Great Britain and France). The terms were severe, designed to leave Germany with a small military that could never again threaten its neighbors. The German Government and people, and perhaps especially the military, never accepted that they had been defeated in the war, and viewed the Treaty as completely illegitimate. The Weimar Republic military did its best to violate, evade or weaken disarmament obligations. Although the German military and related infrastructure were dramatically reduced from pre-war levels, those remaining were designed to provide a base for restored power in the future.

Differences among the Allies facilitated German noncompliance. The United States, responsible for many of the Versailles provisions, played no role in their implementation, because the Senate refused advice and consent to the Treaty’s ratification. That left Great Britain and France as the major enforcers of the Versailles disarmament requirements. The two differed significantly in their approach. Great Britain was somewhat sympathetic to German arguments for a loosening of the Treaty’s constraints, while France insisted on the strictest possible implementation. When the two acted together, they induced greater German compliance. However, as years passed, the British were increasingly anxious to cease on-site enforcement, and even France grew less and less inclined to hold fast.

While the Weimar Republic had considerable success in its noncompliance aims, the ascension of Hitler to power in 1933 opened a whole new phase. German violations of the Versailles military provisions remained clandestine for two years, but expanded greatly during that time. Finally, in 1935, Hitler disavowed those obligations. The Allies objected verbally, but did nothing else, hoping that the Nazis would not go further. The era of appeasement had begun.

2. *United States versus the Soviet Krasnoyarsk radar violation of the Anti-Ballistic Missile (ABM) Treaty, 1983-1993.*

The ABM Treaty between the United States and Soviet Union entered into force in 1972. The central aim was to prevent either side from developing a ballistic missile defense of its national territory. To that end, the Treaty required that ballistic missile early warning (BMEW) radars be located only on the periphery of the territory and oriented outward. In 1983, the United States discovered a large phased-array radar (LPAR) under construction near the city of Krasnoyarsk which was 700 km from the nearest border and oriented in the opposite direction. It had taken some time for the United States to detect the violation.

For the next several years, the Soviet Government made a series of claims and proposals to win United States agreement to the existence and operation of the Krasnoyarsk radar. The Reagan and then George H.W. Bush Administrations remained steadfast that the radar violated the

Treaty, and might provide an important part of the basis for a territorial defense. They would accept only its complete dismantlement. Soviet refusal to admit its noncompliance continued for some years after General Secretary Mikhail Gorbachev came to power in March 1985, despite his commitment to *perestroika* (restructuring) and *glasnost* (openness). Finally, in September 1989, Gorbachev informed President Bush that the Soviet Union would destroy the Krasnoyarsk radar. Foreign Minister Eduard Shevardnadze announced that decision in a speech to the Supreme Soviet a month later, acknowledging that the radar was a clear violation of the ABM Treaty. After the fall of the Soviet Union, the United States agreed to a Russian proposal that the largely-dismantled radar buildings could be converted to a furniture factory. Nevertheless, recent commercial satellite imagery indicates that the facility eventually was completely destroyed.

3. *United States and others versus the Iraqi real and apparent violations of the United Nations Security Council (UNSC) Resolutions on WMD disarmament, 1991-2003.*

UNSC resolutions after the first Gulf War required Iraq to end its programs for WMD and ballistic missiles of 150-km range and over. A new UN Special Commission (UNSCOM) was created to verify the elimination of all chemical and biological weapons, prohibited missiles, and related material, equipment and infrastructure.<sup>10</sup> The International Atomic Energy Agency (IAEA) was given the same responsibility for the nuclear program and capabilities. The inspectors were to have unrestricted, any time-anywhere access to declared and suspect sites. Iraq was to provide full declarations of all of its WMD and prohibited missile holdings and facilities, as well as related materials and equipment. Further, Iraq was required to surrender all prohibited weapons, material and equipment to UNSCOM/UNMOVIC and the IAEA for destruction. Relevant facilities were to be destroyed or converted under the inspectors' supervision.

Iraq repeatedly violated its UNSC obligations – filing incomplete and inaccurate declarations; denying inspectors' access to sites, personnel and documents; unilaterally destroying prohibited items without verification. Iraq came into apparent compliance with at least most of its nuclear-related obligations after a defector in 1995 revealed the true extent of its clandestine nuclear weapons program. Nevertheless, when inspections ended just before the Second Gulf War, the IAEA still had some unanswered questions. Unresolved issues about Iraq's chemical and biological weapons and prohibited missile programs were much more serious. UNMOVIC was unable to confirm the elimination of significant quantities of munitions, bulk agent and prohibited missiles and components. Iraq's refusal to disclose the status of those programs reinforced U.S., British and other governments' belief that Baghdad retained large WMD stockpiles.

At the conclusion of the Second Gulf War, the United States and coalition forces discovered that virtually all WMD, prohibited missiles, and related material, equipment and facilities had been destroyed. The bulk of undeclared stocks were eliminated soon after the First Gulf War. Analysts have offered various hypotheses to explain why Saddam Hussein chose to invite invasion and regime overthrow by creating the false impression that he retained WMD and prohibited missiles. While the actual reason or reasons may never be known, a 2004 Iraq Survey Group (ISG) report on Iraq's WMD programs concluded that Saddam placed great value on possessing WMD capabilities and planned to reconstitute Iraq's WMD and missile programs sometime after sanctions were lifted. The report also found that Saddam's primary motive for doing so was to

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<sup>10</sup> In December 1999, UNSCOM was replaced by the UN Monitoring and Verification Commission (UNMOVIC).

re-establish political and military power vis-a-vis Iran, its principal regional enemy.<sup>11</sup>

4. *United States and others versus the North Korean nuclear violations of the Nuclear Nonproliferation Treaty (NPT), the IAEA Safeguards Agreement, the 1992 North-South Denuclearization agreement, the 1994 U.S.-North Korea Agreed Framework, the 2005 Joint Statement of the Six-Party Talks, and UNSC Resolutions, 1992-2009.*

This period witnessed a continual agreement-violation cycle. Under Soviet pressure, North Korea adhered to the NPT in 1985, but refused to complete the required IAEA Safeguards Agreement unless and until the United States withdrew nuclear weapons from South Korea. After the United States decided in September 1991 to remove those weapons, North Korea signed the North-South Denuclearization Agreement and the IAEA Safeguards Agreement. Pyongyang violated both immediately. The “nuclear crisis” resulting from that noncompliance ended in October 1994 with the U.S.-North Korea Agreed Framework, under which the North would receive substantial economic and energy benefits in exchange for compliance with its NPT, IAEA and Denuclearization Agreement obligations. The Agreed Framework collapsed in Fall 2002, after the United States learned that North Korea was pursuing a clandestine nuclear enrichment program in violation of its nuclear obligations. In January 2003, Pyongyang withdrew from the NPT.

The United States responded with some unilateral sanctions, but concentrated on a diplomatic tack through the new Six-Party Talks (with China, Russia, Japan and South Korea, as well as the North). Those resulted in September 2005 in a Joint Statement that in many ways resembled the Agreed Framework: North Korea would denuclearize in exchange for substantial economic, energy and political benefits. A cycle of escalating North Korean provocations and U.S. concessions followed. After multiple North Korean ballistic missile tests in July 2006, the UNSC imposed the first of many resolutions demanding an end to Pyongyang’s ballistic missile programs. The subsequent UNSC resolutions also required an end to its nuclear programs. Pyongyang ignored all of them. The United States tried (and failed) to induce North Korean compliance with a series of further concessions after the first nuclear test in October 2006. Finally, in April 2009, Pyongyang announced that it would no longer participate in the Six-Party Talks or be bound by any agreements. One month later, it conducted its second nuclear test. The agreement-violation cycle had ended. Its place was taken by a new cycle of UNSC sanctions and progressively more threatening North Korean nuclear and ballistic missile developments.

## The Questions

Each of the case studies in Chapters 2-5 will address the following questions regarding the violation(s) and responses they involved. Chapter 6 provides summary answers to those questions from the case studies, and suggests lessons learned for the future.

1. Did the character of the government committing the violation incline it toward breaching the agreement? (For example, authoritarian regimes – unaccountable, secretive, deceptive, byzantine, aggressive – may be prone to noncompliance.)

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<sup>11</sup> “Regime Strategic Intent,” in *Comprehensive Report of the Special Advisor to the DCI on Iraq’s War*, September 30, 2004, available at <https://www.cia.gov>.

2. What did the violator hope to gain? What consequences did it anticipate? No response, with the violation undetected or unpunished? Penalties that would be acceptable in light of the expected gain?
3. Had the violator accepted the agreement willingly or under duress? Was acceptance of the agreement the result of a strategic decision or was it a tactical expedient?
4. Were there aspects of the agreement that increased the likelihood of violations? Were there deficiencies in verification capabilities that the violator could exploit?
5. Were the proscribed capabilities easy or hard to conceal? Could they be clandestinely obtained from third parties?
6. When detected, was the violation blatant or plausibly ambiguous? Were its consequences seen as serious or relatively unimportant?
7. Was the response to the violation undertaken by one or multiple parties? Were there differences within the government, or within and among the governments, responding to the violation? Were there differing assessments of the violation and possible responses? If so, what were the effects of these differences? If the response was unilateral in nature, was this a source of strength or weakness? If a number of states were involved, what were the advantages or disadvantages of a multilateral response?
8. What types of responses to the violation were considered or adopted? Inaction? Accommodation? Negotiation of a revised or new agreement? Diplomatic pressure? Retaliatory breach of another arms control constraint? Economic sanctions? Military improvements, threats, or action? How effective were those that were pursued?
9. If the response involved inducements as well as penalties, is there evidence suggesting that the combination was more effective than either alternative alone?
10. What tools and tactics were available to the violator to inhibit, fend off, or withstand a response? Which were chosen and why? What was their effectiveness?
11. Were there important asymmetries in the stakes and resolve between the violator and the enforcer(s) that had a significant influence on the outcome of the case?
12. On the whole, why did deterrence of the violation fail? Why did efforts to restore compliance succeed or fail?

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## Chapter Two: Versailles Case Study

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### ***Case Study One: Allied Powers versus the German Violations of the Versailles Treaty Disarmament Clauses, 1919-1935***

#### **Overview**

The years 1919-1935 covered two different periods of German violations of the Versailles Treaty disarmament provisions. Throughout the 1920s, the democratic governments of the Weimar Republic committed numerous Versailles violations, but sought to do so in large part clandestinely. When some – although not all – of those violations were discovered, the German Government complied to the minimum extent required, and/or played down their significance. None of the Weimar violations had a dramatic military effect in and of themselves, but together many laid the foundations for the German rearmament of the 1930s. The whole of the Weimar violations was greater than the sum of the parts.

The second period began with the ascension to power of Adolf Hitler. Clandestine violations at first accelerated and expanded; within two years, they gave way to overt remilitarization. Hitler officially repudiated the Versailles military clauses in January 1935, and ended the last vestige of Versailles arms control when he sent troops into the demilitarized zone on the left bank of the Rhine.<sup>12</sup>

The Versailles Treaty was negotiated at the Paris Peace Conference beginning in January 1919, and presented to the German Government in May of that year. Germany did not participate in the negotiations, and the changes it requested to the text were mostly rejected.<sup>13</sup> The Treaty was signed in June 1919. The victorious and defeated parties were not put on an equal plane; the very first lines of the Treaty, identifying the “High Contracting Parties,” separated them between the Allied and Associated Powers “of the one part; and Germany, of the other part”.<sup>14</sup> The main parties to the Versailles Treaty were the British Empire, France, Italy and Germany.<sup>15</sup> The first three, along with the United States and Japan, were identified in the Treaty as the “Principal Allied

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<sup>12</sup> The remilitarization of the Rhineland also violated the 1925 Locarno Pact, which was hailed at the time as ushering in a new era of peace and cooperation among the former World War I adversaries. In Article 1 of Locarno, the parties committed to observe Articles 42 and 43 of the Versailles Treaty, which forbade any German fortifications, armed forces or military maneuvers on the left bank of the Rhine or within 50 kilometers of the right bank. See “Treaty of Mutual Guarantees between Germany, Belgium, France, Great Britain and Italy: October 16, 1925 (The Locarno Pact),” in Yale Law School, Lillian Goldman Law Library, *The Avalon Project: Documents in Law, History and Diplomacy*, p. 1, available at <http://avalon.yale.edu>.

<sup>13</sup> Norman A. Graebner and Edward M. Bennett, *The Versailles Treaty and Its Legacy: The Failure of the Wilsonian Vision* (New York: Cambridge University Press, 2011), pp. 57-58.

<sup>14</sup> “Treaty of Peace with Germany (Treaty of Versailles),” U.S. Department of State, *Treaties and Other International Agreements of the United States of America, 1776-1949*, Vol. II, Multilateral, 1918-1930 (Washington, 1969), pp. 43-44, available at <https://www.loc.gov>.

<sup>15</sup> The other parties were Belgium, Bolivia, Brazil, China, Cuba, Ecuador, Greece, Guatemala, Haiti, Hedjaz (attained independence in 1916; incorporated into Saudi Arabia in 1924), Honduras, Liberia, Nicaragua, Panama, Peru, Poland, Portugal, Romania, Serb-Croat-Slovene State, Siam, Czechoslovakia and Uruguay. Of those, only Belgium played a noticeable role in implementing the Versailles disarmament provisions.

and Associated Powers,” charged with ensuring German implementation of its provisions. The United States was a – if not *the* – lead negotiator of the Treaty, but the Senate rejected it in November 1919. The U.S. ratification debate delayed Versailles’ entry into force until January 1920. That delay caused the first of the violations of the Treaty’s disarmament provisions, because of some of the tight deadlines in the Treaty.

The military, naval and air clauses are found in Part V of the Treaty. The other major arms control provisions, on the demilitarization of the Rhineland, are in Part III. All were designed to reduce Germany’s political and military power to a level incapable of any external military action. The preamble to Part V sought to make its provisions more palatable to the German public (and thus lessen the potential backlash against the Weimar Government) by linking them to universal disarmament.<sup>16</sup> The lack of progress on the latter was used from time to time by German officials to justify their demands for revisions to Part V – until Germany’s withdrawal from the League of Nations Disarmament Conference in 1933.

The major provisions of Part V were as follows:

- By March 31, 1920, reduction of the German army to 100,000 men (including no more than 4000 officers) in a maximum of seven divisions of infantry and three of cavalry;
- Abolition of the Great General Staff, staff colleges and military academies;
- Abolition of conscription, and required service periods of 25 years for officers and 12 for enlisted men;
- Prohibition of tanks, heavy artillery and chemical weapons;
- Deep reductions in other armaments and ammunitions; excess to be surrendered to Principal Allied and Associated Powers within two months of entry into force;
- Reduction of national police force to 150,000 lifetime employees;
- Ban on paramilitary organizations;
- Abolition of the Flying Corps and prohibition of military aircraft. Existing military aircraft to be delivered to the Principal Allied and Associated Powers;
- Reduction of navy personnel to 15,000 sailors (including no more than 1500 officers);
- Limit of 6 battleships, 6 light cruisers, 12 destroyers, 12 torpedo boats. Displacement of any replacements strictly limited. Prohibition of submarines;
- Ban on import of “armoured cars, tanks and all similar construction,” and on import and export of “arms, munitions and war material of every kind;”
- Closure within three months of entry into force of all “establishments for the manufacture, preparation, storage or design of arms, munitions, or any material whatever,” except for those approved by the Principal Allied and Associated Powers.

Article 203 of the Treaty created Inter-Allied Commissions of Control (IACCs) to monitor the military, naval and air provisions for which a time limit was set. The IACCs were “specially charged with the duty of seeing to the complete execution of the delivery, destruction, demolition and rendering things useless to be carried out at the expense of the German Government”.<sup>17</sup> The

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<sup>16</sup> The Preamble to Part V reads as follows: “In order to render possible the initiation of a general limitation of the armaments of all nations, Germany undertakes strictly to observe the military, naval and air clauses which follow.” “The Versailles Treaty, June 28, 1919: Part V,” in Yale Law School, op. cit., p. 1.

<sup>17</sup> Article 203, “The Versailles Treaty, June 28, 1919: Part V,” p. 7.

three IACCs were Military (concerning Army restrictions), Naval and Aeronautical. The Treaty gave these unprecedented monitoring commissions “anytime, anywhere” access: The IACCs “shall be entitled as often as they think desirable to proceed to any point whatever in German territory, or to send subcommissions, or to authorize one or more members to go, to any such point.”<sup>18</sup>

The question of the IACCs’ authority over non-time-limited provisions (such as the import-export ban) immediately arose. Another, perhaps even more serious, constraint on the IACC resulted from the Allies’ decision to require a German liaison committee to coordinate the disarmament process. This step has been described as handing to the German military “the quite unexpected opportunity to appoint what, from its standpoint, would be a committee of obstruction.” The nature of the liaison committee became immediately obvious with the appointment of its first head, a Prussian general strongly opposed to the Versailles Treaty.<sup>19</sup> Liaison officers frequently blocked or delayed IACC access to military or industrial sites, often using safety arguments.<sup>20</sup> Obstruction turned to virtually complete prohibition for most of 1923, when Germany refused to accept French and Belgian inspectors in reaction to their occupation of the Ruhr. The IACCs ended in early 1927, even though several compliance issues remained. Responsibility for investigating compliance with the Versailles disarmament provisions devolved to the League of Nations, which did precisely nothing.<sup>21</sup>

**Weimar Republic.** The environment in the 1920s for the implementation of the Versailles disarmament provisions was unique. The contrast with the period after World War II is striking. The imposed Versailles provisions were rejected as unfair and unacceptable by most segments of German society – from the political and military leadership to the workers whose jobs were threatened by disarmament and all whose livelihood was threatened by rampant postwar inflation. The German domestic political situation was in turmoil, with the rise of both Bolshevik movements and the ultimately more important far-right paramilitary groups. For much of the society, the pre-1918 military and even the monarchy were not discredited. On the contrary, blame for Germany’s postwar difficulties was placed on a supposed “stab in the back” by the democratic Weimar Government and its supporters in accepting the Versailles terms. The perceived illegitimacy of Versailles fueled a nationalist backlash.

In all, as well described by Andrew Barros, Germany after World War II disarmed morally as well as materially; it fully accepted its responsibility for the war and its aftermath. In contrast, Germany in the 1920s never disarmed morally, even if it grudgingly carried out several of the Versailles disarmament provisions. A further important factor was that Germany was not invaded during the First World War, and its civilian and military-related infrastructures were intact. Combined with

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<sup>18</sup> Article 205, *ibid.* p. 8.

<sup>19</sup> Barton Whaley, *Covert German Rearmament, 1919-1939: Deception and Misperception* (Frederick, MD: University Publications of America, Foreign Intelligence Book Series, 1984), p. 9.

<sup>20</sup> There were several episodes of physical harassment and even violence against IACC inspectors. Historians differ on whether those presented serious, systematic obstacles to the IACCs work. See, for example, Richard J. Shuster, *German Disarmament after World War I: The Diplomacy of International Arms Inspection 1920-1931* (New York: Routledge 2006), pp. 121-125; and Richard Dean Burns and Donald Urquidí, *Disarmament in Perspective: An Analysis of Selected Arms Control and Disarmament Agreements between the World Wars, 1919-1939*, Vol. I: Disarmament and the Peace Conference (Los Angeles: California State College at Los Angeles Foundation, July 1968), p. 160.

<sup>21</sup> Shuster, *op. cit.*, pp. 149-165.



the political situation, this helped the German Government of the 1920s to sustain and foster a personnel, technological and industrial foundation for the rearmament of the 1930s.<sup>22</sup>

Many historians also assess that the German Government wanted to retain sufficient forces to defeat a feared attack by Poland, which was militarily aggressive toward its neighbors in the first years after the World War. This concern was a major stated reason for German insistence on maintaining its paramilitary forces and fortresses in the east.<sup>23</sup> At least one historian claimed that this German “war neurosis [was] partly genuine and partly fostered by the Army for its own purposes.”<sup>24</sup>

The German Army worked from the start to delay or evade implementation of the Versailles military clauses. The Great General Staff was technically abolished, but in fact immediately reestablished in the guise of the *Truppenamt* (Troops Office), under General Hans von Seeckt from 1920 to 1926. Another committed foe of Versailles, von Seeckt has been described as making the army a “veritable ‘state within a state,’ immune to political interference and insulated from external control.”<sup>25</sup> Von Seeckt reportedly sought to keep his treaty noncompliance secret from the central government, but it appears clear that at least some senior civilian leaders knew of and supported military evasions of Versailles, especially after Gustav Stresemann became Chancellor in 1923.<sup>26</sup>

The Allies focused on German implementation of the Versailles provisions on military manpower and armaments, police manpower, and the paramilitary forces. After threatening occupation of the Ruhr in 1922, they reportedly succeeded in persuading Germany to reduce its army to 100,000 men.<sup>27</sup> However, this “legal army” kept close relations with numerous large paramilitary groups, heavily composed of demobilized troops. Historians differ as to whether the paramilitary groups were eventually abolished in the late 1920s, but in any case they quickly revived with the development of the Nazi movement.<sup>28</sup> The police forces were never reduced to their 1913 level or decentralized in accordance with the Treaty. The hundreds of thousands of German police and paramilitary groups helped both to strengthen German defenses in the east, and to provide an important basis for the large *Wehrmacht* of the 1930s.<sup>29</sup>

The “legal army” also both circumvented and took advantage of the Versailles requirement for long service periods. That provision, and the ban on conscription, were designed to prevent

<sup>22</sup> See Philip Towle, “Forced Disarmament in the 1920s and After,” *Journal of Strategic Studies*, Vol. 29, No. 2 (August 2006), pp. 323-344, and Andrew Barros, “Disarmament as a Weapon: Anglo-French Relations and the Problems of Enforcing German Disarmament, 1919-28,” *Journal of Strategic Studies*, Vol. 29, No. 2 (April 2006), pp. 301-321.

<sup>23</sup> See, for example, Gerald Freund, *Unholy Alliance: Russian-German Relations from the Treaty of Brest-Litovsk to the Treaty of Berlin* (London: Chatto and Windus, 1993), pp. 151-152; E.L. Carsten, *The Reichswehr and Politics, 1918 to 1933* (Oxford: Clarendon Press, 1966), pp. 147-151; and John W. Wheeler-Bennett, *The Nemesis of Power: The German Army in Politics, 1918-1945* (London: Macmillan and Company, 1953), p. 92.

<sup>24</sup> Wheeler-Bennett, *idem*.

<sup>25</sup> Burns and Urquidí, *op. cit.*, p. 176.

<sup>26</sup> See Hans W. Gatzke, *Stresemann and the Rearmament of Germany* (Baltimore: Johns Hopkins University Press, 1954), and Burns and Urquidí, *op. cit.*, p. 176.

<sup>27</sup> Shuster, *op. cit.*, pp. 77-78.

<sup>28</sup> See E.J. Gumbel, “Disarmament and Clandestine Rearmament under the Weimar Republic,” in Seymour Melman, ed., *Inspection for Disarmament* (New York: Columbia University Press, 1958), p. 207, p. 217; and Fred Tanner, “Versailles: German Disarmament after World War I,” in Fred Tanner, ed., *From Versailles to Baghdad: Post-War Armament Control of Defeated States* (New York: United Nations, 1992), p. 21.

<sup>29</sup> Neal H. Petersen, “The Versailles Treaty: Imposed Disarmament,” in Richard Dean Burns, ed., *Encyclopedia of Arms Control and Disarmament*, Vol. II, Part 3: Historical Dimensions to 1945 (New York: Charles Scribner’s Sons, 1993), p. 631.

recreation of the militarized society that characterized Prussia and was broadened to the rest of Germany after 1871. The strength of the paramilitary groups undermined that aim. Further, contrary to the Allies' intention, the ban on conscription and the length of service times, along with the retention of a *de facto* General Staff and the nationalist backlash to Versailles, led to the German army being "forged into a tightly-knit, highly disciplined cadre force, designed not only to resist foreign attack but to provide the basis for later expansion."<sup>30</sup> Thus, the German leadership violated the spirit of the Versailles provisions on army manpower even where it complied with their letter, creating a further basis for the future *Wehrmacht*.

The IACCs also focused on the major German weapons firms, especially Krupp. Under strict supervision, the Krupp complex in Germany produced only four types of guns and replacement parts for ships, but maintained much of its skilled work force by diversifying. Further, Krupp engaged in development and production of new artillery, anti-aircraft guns and tanks in wholly-owned plants in Sweden and the Netherlands. Other German firms joined Krupp in producing arms in the Netherlands.<sup>31</sup> These activities circumvented Versailles, but may not have been technical violations, because the Treaty did not explicitly prohibit arms production by German-owned firms abroad.<sup>32</sup>

As required by the Treaty, the German army destroyed virtually all of its tanks, armored cars and heavy artillery. Von Seeckt reportedly saw this as another opportunity to lay a foundation for a future modern military. Unlike French and British forces, with huge quantities of aging equipment, reconstituted German forces would be modern. Beginning in 1925, top Krupp arms designers, operating under a false name, "developed eight types of heavy artillery, howitzers, and light field guns; a new, mobile 201-mm mortar; and an entire family of tanks." The tanks were designated as light, medium and heavy tractors. Secret prototype production of these "tractors" and armored cars began the following year. Krupp tank and armored vehicle design and production also took place in Sweden.<sup>33</sup>

The 1922 Treaty of Rapallo between Germany and the Soviet Union led quickly to clandestine military cooperation which further circumvented the Versailles disarmament provisions. Von Seeckt initially hoped for extensive development and production of munitions, ships, aircraft and chemical weapons in Russia. Most of those efforts failed given Soviet economic difficulties, but a Junkers aircraft plant became one of the most important in the Soviet Union, and Krupp produced and shipped to Germany a large number of artillery shells. More important, in the late 1920s, the Red Army and *Reichswehr* established a joint armored warfare testing facility in Kazan that reportedly was critical to later German tank warfare.<sup>34</sup>

The German Navy in the 1920s also helped establish a foundation for Hitler's navy a decade later. After an initial violation of the Treaty (when the Navy scuttled its fleet in Scapa Flow rather than surrender it to the Allies), the Navy complied with the central limits on the size and number of its ships. However, in the mid-1920s, it secretly trained for a short period volunteer sailors who could

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<sup>30</sup> Burns and Urquidi, *op. cit.*, p. 176.

<sup>31</sup> Whaley, *op. cit.*, pp. 10-11.

<sup>32</sup> Armament development and production outside Germany would violate the Treaty only if they involved imports to, or exports from, Germany.

<sup>33</sup> Whaley, *op. cit.*, pp. 28-33.

<sup>34</sup> Ian Johnson, "Sowing the Wind: The First Soviet-German Military Pact and the Origins of World War II," in *War on the Rocks*, available at <https://warontherocks.com>.

function as a reserve.<sup>35</sup> More important, development and production of German-designed submarines took place initially in the Netherlands, and then in Japan, Spain, Finland and Turkey. The last three countries let Germans put the submarines through their sea trials, so that the cooperation provided valuable experience to German sailors as well as shipbuilders. Late in the period of this case study, U-boat frames and parts were smuggled into the Kiel naval base; by 1934, 12 submarines simply awaited assembly.<sup>36</sup> In 1929, production started on three pocket battleships that would exceed the Treaty tonnage limits.<sup>37</sup>

Violations of the air provisions of Versailles were relatively easy, and difficult to detect, given the dual-use nature of aircraft. Experienced pilots were incorporated throughout the *Reichswehr*, and the War Ministry secretly funded private aviation activities. Shortly after the war, Tony Fokker smuggled an entire aircraft factory to the Netherlands. German aircraft development work also took place in Denmark, Switzerland and Sweden, as well as in Russia. The 1926 creation of Lufthansa as the state commercial airline provided a perfect cover for air force testing and training.<sup>38</sup> Also extremely important was the clandestine German-Soviet air training and testing facility at Lipetsk. Almost 1000 German pilots, mechanics and engineers trained, and all German aircraft manufacturers tested their prototypes, at Lipetsk. The Germans also adopted Soviet concepts learned there, including use of paratroops and dive bombers.<sup>39</sup> Thus, as with the Army and Navy, the German used violations and circumventions of the Versailles air clauses to build a solid foundation for the Nazi *Luftwaffe*.

Germany was, of course, fully responsible for its violations and evasions of the Versailles disarmament clauses. Enforcement was weakened by German success in clandestine violations that were either never discovered or not pursued by the Allies, and in circumventions that were contrary to the spirit, but not the letter, of Versailles. The weakness of enforcement, however, also derived from serious differences between the United Kingdom and France and from a combination of “enforcement fatigue” and wishful thinking that affected even France by 1925.

France initially insisted on strict implementation of all Versailles Treaty provisions, in an effort to destroy any German ability to pose once again a military threat to France. Defeated by Prussia in 1871 (and thereby losing its Rhine border), France prevailed in the First World War but at a terrible price. Most battles of the war took place on French territory, with consequent huge economic damage and loss of life. France and Belgium occupied the Ruhr in 1923 after German failure to meet its reparations obligations, and advocated Rhineland occupations in response to disarmament shortcomings. Those French positions led many Germans, and some British, to believe that France would not be satisfied until it permanently controlled the left bank of the Rhine.

The British motivations were completely different. London wanted early implementation of the major Versailles disarmament provisions, an end to the IACCs within months, and admission of Germany to the League of Nations. The United Kingdom seemed more concerned with threats

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<sup>35</sup> Captain Schuessler (Navy), ed., “The Fight of the Navy Against Versailles 1919-1935,” Published by the High Command of the German Navy Berlin 1937, Partial Translation of Document C-156, Prosecution Exhibit 1020, in Nuernberg Military Tribunal, *Trials of War Criminals before the Nuernberg Military Tribunals Under Control Council Law No. 10, Nuernberg, October 1946-April 1949*, Vol. X (Washington: Government Publishing Office, 1951), pp. 447-448.

<sup>36</sup> Whaley, op. cit., pp. 27-28,

<sup>37</sup> Burns, ed., op. cit., p. 14.

<sup>38</sup> Ibid., pp. 14-15.

<sup>39</sup> Johnson, op. cit., pp. 2-3.

from the Soviet Union, the German Communist Party and an overly-dominant France than with German resurgence. Further, many in the British Government and society came to view the Treaty as unduly harsh, meriting loose enforcement at most.<sup>40</sup>

In the early 1920s, when Britain and France presented a united front and brandished the threat of new or continued territorial occupations, they had some success in persuading Germany to improve compliance. Throughout 1924, the United Kingdom and France both hinted to the Germans that they would withdraw from the northern Rhineland in January 1925, if German disarmament was satisfactory. However, in December 1924, the Allied Control Commission reported several areas of continued German noncompliance: reconstruction of the Great General Staff; recruitment and training of volunteers; conversion of arms factories; excess military equipment; and failure to reorganize the police, to prohibit war material export and import, or to adjust *Reichswehr* recruitment and organization.<sup>41</sup>

The eventual German reaction was to propose a western security treaty, which supposedly would address France's fundamental concerns about German armament. The result was the October 1925 Locarno Pact, for which the Foreign Ministers of France, the United Kingdom and Germany – Aristide Briand, Austen Chamberlain and Gustav Stresemann – received the Nobel Peace Prize. The “Spirit of Locarno” – wishful thinking reinforced by fatigue – led the French to join the British in withdrawal from the Rhineland on January 31, 1926, despite the outstanding compliance issues.<sup>42</sup> One year later, with most of those issues still unresolved, the IACCs were disbanded. Responsibility for policing German compliance devolved to the League of Nations, which was meaningless. As one analyst has written, “Without control commission inspectors, the League was blind; without an army of occupation, it was powerless.”<sup>43</sup>

The end of Allied monitoring of German compliance did not mean an immediate fundamental change in German military activities. However, the pace of research and development picked up, and production of prohibited arms began to accelerate.<sup>44</sup> Moreover, the absence of in-country monitors and the weakness of Allied intelligence “meant that design, testing, and training could proceed under thinner, less hampering cover.” For example, the secret design bureau moved back to the main Krupp complex in Essen.<sup>45</sup>

**Nazi Rearmament.** For the first two years Hitler was in power, he continued the Weimar practice of covert violations and evasions, but on a much greater scale. In 1932, Germany ceased publishing lists of military officers. In 1933, Hitler put the main paramilitary organizations under *Reichswehr* jurisdiction. Because conscription was prohibited, Hitler in 1934 created the National Labor Service, obligatory for 18-year-old males. The secret air force was expanded, under civilian cover. In April 1934, rearmament was secretly ordered. Krupp was to deliver 100 tanks by March 1934 and 650 more by March 1935.<sup>46</sup>

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<sup>40</sup> Barros, op. cit., passim.

<sup>41</sup> Gatzke, op. cit., pp. 28-29.

<sup>42</sup> Ibid., pp. 34-45.

<sup>43</sup> Whaley, op. cit., p. 41.

<sup>44</sup> Burns, ed., op. cit., p. 17.

<sup>45</sup> Idem.

<sup>46</sup> Whaley, op. cit., pp. 44-50.

In March 1935, Hitler publicly renounced the Versailles disarmament provisions. He introduced universal military service and announced the creation of the *Wehrmacht*, which was to have 500,000 men in 36 divisions. Air Minister Hermann Goering announced the formation of the *Luftwaffe*. The Allies objected, but took no action. In April 1935, the French, British and Italian prime ministers issued the Final Declaration of the Stresa Conference, reaffirming the Locarno Pact and agreeing to oppose *any further* German effort to change the Versailles Treaty; the pattern of 1930s appeasement was established.

Indeed, the United Kingdom and France might have engaged in preemptive appeasement, emboldening Hitler to make his March announcements. In February 1935, they offered to Germany a new treaty providing for equal force limits, which would have overturned Versailles. Going even farther, in June 1935, Britain signed a new naval agreement with Germany limiting the latter to 35 percent of British tonnage. "With one stroke, Britain toppled the naval clauses of the Treaty of Versailles; legitimized Germany's past violations, including construction of submarines and oversized battle cruisers; and destroyed the front that had been created at Stresa in April."<sup>47</sup>

Finally, in March 1936, German troops marched into the Rhineland. The British and French responded with strong words. France appeared ready to take military action, but only if Britain joined it. After some deliberation, "the British escaped responsibility by suggesting that the Rhineland was a League issue."<sup>48</sup> The Allied reactions to the remilitarization of the Rhineland, as well as to all the other military actions by Hitler starting in 1935, were based on a strong overestimation of German military strength (especially by France), and on a British tendency toward appeasement that would find its apotheosis at Munich in 1938. Historians concur that French and/or British military action against German troops in the Rhineland in 1936 would have succeeded quickly – most likely via a precipitous withdrawal of the undermanned, underequipped Germans. Hitler bluffed, and did so most effectively. As Barton Whaley has described the evolution of German deception from Weimar to Hitler, Germany "switched from dissimulative deception that concealed the facts of secret preparations to simulative deception that concealed weakness."<sup>49</sup>

## Questions

- 1. *Did the character of the government committing the violation incline it toward breaching the agreement? (For example, authoritarian regimes – unaccountable, secretive, deceptive, byzantine, aggressive – may be prone to noncompliance.)***

The Weimar Republic and the Third Reich, despite their huge differences, were both inclined to violate Versailles disarmament provisions, but to vastly different degrees.

In the 1920s, the political and societal strength of the German army, and the hostility of its leadership to Versailles, made the military committed and able to violate and circumvent the Treaty, and to encourage and assist leading arms manufacturers to do so as well. Records are unclear as to how much the Weimar civilian leadership knew about the military's activities in the

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<sup>47</sup> Burns, ed., op. cit., p. 19.

<sup>48</sup> Graebner and Bennett, op. cit., p. 134.

<sup>49</sup> Whaley, op. cit., p. 56.

first years of the Republic. However, the evidence is strong that Stresemann knew and approved of many of the Versailles violations and evasions, beginning with his short-lived chancellorship in 1923, and perhaps much more through his six-year tenure as foreign minister.<sup>50</sup> Further, it is questionable whether the very weak Weimar central government could have controlled the widespread paramilitary groups – much less abolish them, as required by Versailles. The government's weakness also forced it to comply at least to some extent when the Allies took strong, united action against violations they uncovered. However, the list is long of violations and evasions that the Allies never discovered, never acted upon, or whose resolution they abandoned after some years. The development of "light, medium and heavy tractors" is an example of the first; overseas cooperation of the second; and the existence of paramilitary groups and size of the police force of the third.

The Hitler regime between 1933 and 1935 accelerated and expanded clandestine rearmament far beyond the Weimar violations and evasions. Hitler was the absolute ruler of National Socialist Germany—the *Führerprinzip* gave him complete dictatorial authority and power. He in turn had no interest in compliance or conciliation except, perhaps, as a tactical step if necessary to help expand German military power. Now the top political leader was not just witting of the violations, but was their dictatorial instigator, whose actions were welcomed by the military and the arms industry. A democratic German regime, no matter how nationalistic and opposed to Versailles, probably would not have dared to dismiss the Treaty as summarily as Hitler did in 1935. A democratic government also might not have been able to maintain the myth of German military might in the years 1935-1938. Opposition figures or military officers concerned that the Allies might call Germany's bluff might have revealed at least some of the truth, as some Social Democratic politicians sought to do during the Weimar period.<sup>51</sup>

**2. *What did the violator hope to gain? What consequences did it anticipate? No response, with the violation undetected or unpunished? Penalties that would be acceptable in light of the expected gain?***

In the immediate postwar period, the German military and arms industry probably thought that they had little to lose by seeking to violate or circumvent the Versailles provisions. The Treaty's military clauses were so draconian, and domestic opposition to them so strong, that the military and arms industry foresaw little worse – with one important exception. For example, what real risk did Tony Fokker run in smuggling the components of his aircraft factory to Holland? If he had not done so, the factory would almost certainly have been closed and the equipment confiscated. If he was caught smuggling, the penalty likely would not have been any harsher.

Further, the military and arms industry probably thought there was a good chance that their violations would go undetected. The IACCs were too small to do their work thoroughly, and the German liaison committee was quite successful in further reducing their effectiveness (e.g., the "surprise" IACC inspections were almost always telegraphed in advance). The Germans could

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<sup>50</sup> See Gatzke, op. cit., passim.

<sup>51</sup> It is important to note, however, that the Social Democratic revelations had no discernible impact on either the Weimar Government or the Allies. In December 1926, one month before termination of the IACCs, former Weimar Head of Government Philipp Scheidemann gave a lengthy speech in the *Reichstag* detailing German evasions of Versailles, including the formerly secret cooperation with Russia. The speech had no result. Except for the revelation of the cooperation with Russia, everything in Scheidemann's speech had long been known to the Allies. Withdrawal of Allied forces from the Rhineland proceeded on schedule. Gatzke, op. cit., pp. 72-78.

also argue, with considerable justification, that important circumventions such as armaments development outside Germany were not addressed in the Treaty.

The one exception, mentioned above, was the fear of continued, or renewed, Allied military occupation. At the Spa Conference in Summer 1920, the Allies set new, somewhat relaxed deadlines to reduce the *Reichswehr* to the 100,000 limit and to abolish compulsory service. If Germany did not comply, they threatened territorial occupation. Faced with that threat, the Germans quickly complied with most, but not all, Allied requirements.<sup>52</sup> One year later, Britain and France issued the “London Ultimatum,” threatening occupation of the Ruhr Valley unless Germany met disarmament and reparations obligations. A new Weimar Government accepted the ultimatum.<sup>53</sup>

If the Weimar Government and industry saw little to lose by violating and evading the Treaty, they saw much to gain in the long term. With a dire economic and chaotic political situation, they could not maintain pre-World War I force levels even if they had wanted to do so and if the Allies stood idly by. But they could create a solid, multifaceted foundation for future rearmament.

Hitler took full advantage of that foundation, moving quickly to full-scale rearmament and open rejection of the Versailles Treaty. He gambled that the Allies and the League of Nations would do nothing, and was quickly proved right. One month before Hitler disavowed the Versailles disarmament clauses, Britain and France proposed to replace Versailles with a new security agreement. Shortly thereafter, Britain completed the bilateral naval accord. Remilitarization of the Rhineland was an even greater gamble, given German military weakness and the General Staff’s expectation of a response by the much stronger French military. Once again, Hitler was proved right – the gain outweighed any expected penalties.

### **3. *Had the violator accepted the agreement willingly or under duress? Was acceptance of the agreement the result of a strategic decision or was it a tactical expedient?***

Germany accepted the agreement entirely under duress. It played no role in the negotiations. When presented with the Allied text, it was told to submit any suggested changes in writing. The Germans proposed numerous changes, including removal of the war guilt clause. The British were sympathetic, but the Paris Conference finally agreed to accept only a few minor changes. The then-Weimar Government resigned over the issue; its successor agreed to accept the Treaty.<sup>54</sup> This was a necessary tactical expedient; the German Government saw no choice but to sign. If it had refused to do so, it would have invited foreign invasion and possible domestic revolution. Under the circumstances, the government saw signature as the lesser of two evils. But the government, and society as a whole, still saw Versailles as fundamentally unfair and illegitimate. Germany’s distance from the battlefields fueled popular doubts that it had actually been defeated in the war. That, plus upheaval in Berlin, led to widespread stab-in-the-back theories.<sup>55</sup>

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<sup>52</sup> Shuster, op. cit., pp. 77-78.

<sup>53</sup> Ibid., pp. 50-51.

<sup>54</sup> Graebner and Bennett, op. cit., pp. 57-58.

<sup>55</sup> Boris Barth, “Stab-in-the-Back Myth,” *International Encyclopedia of the First World War 1914-1918 Online*, October 2014, available at <https://encyclopedia.1914-1918-online.net>.

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**4. *Were there aspects of the agreement that increased the likelihood of violations? Were there deficiencies in verification capabilities that the violator was able to exploit?***

First and foremost, the widespread opposition to the Versailles Treaty among the military, political leadership and general public motivated systematic violations of the agreement. Only a few politicians complained about the noncompliance, and they had little effect.

As for deficiencies in verification capabilities, the IACCs were too small to do a thorough job of monitoring compliance, and their work was hampered rather than facilitated by the German liaison committee. Further, the IACCs were disbanded in January 1927, leaving many compliance issues unresolved. Allied national intelligence capabilities were limited, and in Britain's case were focused on Russia and European Bolshevism more than on the German military. France was strongly focused on the German military, but its fundamental security fears led it to overestimate German capabilities. Compounding the problem, by 1926 Allied political leaders did not want to be diverted from accommodation with Germany by the evidence of continuing violations.<sup>56</sup>

Even with stronger monitoring capabilities and political support, the very thoroughness of the Versailles disarmament clauses would have made them virtually impossible to enforce in their entirety. For example, merely counting small arms – let alone reducing them to Treaty limits – was impractical, given the number of German citizens, including demobilized soldiers, who possessed them. Obtaining accurate information on, and confirming reduction of, paramilitary and police forces was also extremely difficult, especially given widespread opposition to the Treaty limits and the domestic turmoil of the Weimar era.

The dual-use nature of much equipment and capabilities further complicated monitoring and enforcement – especially because the Versailles disarmament clauses were not designed to inflict further economic harm on the German population. The problem was exacerbated by the absence of restrictions on development and production outside Germany, and by the failure of the German government to implement the required bans on import and export of war material.

Thus, large converted arms manufacturers like Krupp were allowed to maintain much of their work force through diversified production. Perhaps more important, many retained the financial means to expand ownership of foreign arms manufacturers. A few aircraft manufacturers could develop new military aircraft in the guise of commercial planes. Aircraft production, along with pilot, mechanic and engineer training, increased with the creation of Lufthansa in 1926. Civilian cover stories also were used to develop armored vehicles and tanks.<sup>57</sup>

**5. *Were the proscribed capabilities easy or hard to conceal? Could they be clandestinely obtained from third parties?***

Two of the problems discussed above – the inaccessibility of accurate information on proscribed or limited capabilities, and the dual-use dilemma – made many violations during the Weimar period relatively easy to conceal. The Weimar military and arms industry were also generally quite able to keep their activities hidden from all but senior civilian officials. Scheidemann's expose of violations was a rare exception, and was largely ignored. As mentioned above, the

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<sup>56</sup> Whaley, op. cit., pp. 51-52.

<sup>57</sup> Whaley, op. cit., pp. 10-14, 28-33.



Hitler regime in 1933-1935 was able to keep secret its rearmament activities, despite their acceleration and expansion. After March 1935, secrecy was no longer an issue – except perhaps to mask how much weaker the German military was in reality as compared to propaganda.

Because of the legality of arms work abroad, most of those activities could take place in the open. Witness, for example, the development and production of submarines for Spain, Turkey, Japan, Finland and the Netherlands. A significant exception was the extensive clandestine German-Soviet cooperation. While the German-Russian production plans were not all implemented, some important work was done on aircraft and munitions, and the air and armored training was extremely important in preparing pilots and armored officers.

**6. *When detected, was the violation blatant or plausibly ambiguous? Were its consequences seen as serious or relatively unimportant?***

If the Allies or the League of Nations detected the significant violations by the Third Reich in 1933-35, they did not publicize the fact. The March 1935 disavowal of Part V of the Versailles Treaty was as blatant as one could get. The Allies saw this, and the remilitarization of the Rhineland a year later, as very serious. Nevertheless, their response – after a few words of condemnation – was to try to create a more positive relationship with Germany that would contain a future threat. Thus, the Anglo-German naval treaty that the British hoped would limit the German navy to one-third the tonnage of their own. The same spirit probably motivated the February 1935 French-British proposal for a security treaty establishing equal force limits – even though Hitler had not yet renounced Versailles.

During the Weimar period, most individual violations were seen by the British as relatively unimportant. For the French, in contrast, each was deemed significant. Few observers understood the strategic purpose behind German violations and circumventions: to lay the foundation for the reemergence of a powerful German military and nation.

**7. *Was the response to the violation undertaken by one or multiple parties? Were there differences within the government, or within and among the governments, responding to the violation? Were there differing assessments of the violation and possible responses? If so, what were the effects of these differences? If the response was unilateral in nature, was this a source of strength or weakness? If a number of states were involved, what were the advantages or disadvantages of a multilateral response?***

Under the Weimar Republic, Great Britain and France were the key players in monitoring and enforcing the Versailles disarmament provisions. As discussed above, they often disagreed about the importance of violations and the most appropriate response. On a few occasions, the British and French acted in concert, wielding threats of continued or renewed territorial occupation to induce a change in German behavior. However, they failed to sustain that common front long enough and firmly enough to achieve full compliance.

In the 1930s, the British and French governments generally maintained a common front on responses to German violations – with the one significant exception of the Anglo-German naval agreement. That common front, however, was the antithesis of firm. With each violation, they urged Germany not to go any further. That process did not end until September 1939.

During the Weimar period, the French government appeared internally united on the significance of German arms control violations. Some British officials differed with the more relaxed policy of their government. For example, Brigadier-General J.H. Morgan, a senior early member of the IACC, clashed repeatedly with his superior, Major-General Francis Bingham. Like the French, and unlike the general British view, Morgan “perceived Treaty violations as a personal affront and worked unflinchingly to discover even the smallest discrepancies with the military clauses.” He resigned from the IACC in 1923, but remained as an advisor to the (French) President of the Commission until 1927.<sup>58</sup> After Hitler came to power, most disagreement with British and French policies came from factions outside of the government leadership. For example, Winston Churchill and Lieutenant-Colonel Charles de Gaulle were early, vocal advocates of a firmer position vis-à-vis Germany.<sup>59</sup>

**8. What types of responses to the violation were considered or adopted? Inaction? Accommodation? Negotiation of a revised or new agreement? Diplomatic pressure? Retaliatory breach of another arms control constraint? Economic sanctions? Military improvements, threats, or action? How effective were those that were pursued?**

During the early Weimar period, the main responses were threats of continued or renewed occupation and inaction. As discussed above, the former had some success, but Allied differences made it difficult to sustain. The conclusion of the Locarno Pact was seen as a sign that Germany was now a partner, rather than an adversary. It was also significant that for the first time since Versailles, Germany agreed to honor the Rhineland provisions of the Treaty. Nevertheless, the “spirit of Locarno” had little impact on actual German disarmament compliance. Economic sanctions do not appear to have been seriously considered. They would have had little impact given the desperate German economic situation; instead, the Allies worked to alleviate the reparations burden on Germany through the Dawes Plan.

The Allied response to violations in the 1930s was a combination of inaction and accommodation, along with strong words about future violations. New agreements were also either proposed (in the case of the 1935 proposal for equal force limits) or agreed (the Anglo-German naval agreement).

**9. If the response involved inducements as well as penalties, is there evidence suggesting that the combination was more effective than either alternative alone?**

In the 1920s, the most effective penalty was the threat to maintain or undertake military occupation, but it was not used often. The first noticeable inducement was the conclusion of the Locarno Treaty, recognizing Germany as a legitimate major European power. However, the other parties never sought seriously to link their willingness to conclude the pact to German compliance behavior. Instead, they agreed to address “difficult” disarmament issues in the near future.<sup>60</sup> Similarly, the British and French limited their responses to German violations in the 1930s to accommodations and inducements without any penalties.

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<sup>58</sup> Shuster, op. cit., p.117.

<sup>59</sup> See, for example, Charles de Gaulle, *Vers l'armée de métier* (Paris: Berger-Levrault, 1934) and Winston S. Churchill, *The Gathering Storm* (Boston: Houghton Mifflin, 1948).

<sup>60</sup> Gatzke, op. cit., pp. 39-42.

**10. *What tools and tactics were available to the violator to inhibit, fend off, or withstand a response? Which were chosen and why? What was their effectiveness?***

During the Weimar period, the German government and arms industry used several tools to avoid detection of violations, to limit adverse response when discovered, and to circumvent Treaty restrictions. Each played an important part; taken together, they allowed Weimar to achieve its strategic aim of providing a strong foundation for later rearmament. Secrecy was paramount for the Army and its industrial partners. So too was circumvention, violating the spirit of Versailles but not necessarily its letter. The German Liaison Committee worked hard to obstruct IACC work, and Germany succeeded in halting virtually all inspections for the year 1923, in retaliation to French and Belgian occupation of the Ruhr.<sup>61</sup> When violations were detected, the German military and foreign ministry always downplayed their significance – arguments that the British, but not the French, found persuasive. The British were also sympathetic to German claims about the unfairness of the Versailles provisions. When all else failed, as at the time of the London Ultimatum, the Germans acted to satisfy at least some of the Allied compliance demands.

When Hitler first came to power, he too placed a premium on secrecy. After his pronouncements of March 1935, secrecy was still important to an extent, but for a very different purpose. Rather than trying to keep secret what the German military had and was doing, he wanted to hide its relative weakness. Hitler's main tool to inhibit or fend off a response was bluff and exaggeration of his country's military power. That was so effective that he did not need to withstand a response until September 1939.

**11. *Were there important asymmetries in the stakes and resolve between the violator and the enforcer(s) that had a significant influence on the outcome of the case?***

The major asymmetries in the stakes and resolve were not just between the violator and the enforcer but also between France and Great Britain. Germany had a powerful stake in reestablishing what it saw as its rightful place in Europe and the world. During the 1920s, the government was resolved to create the foundation for that eventual outcome; during the next decade, Hitler was even more determined to achieve a regional and global status far beyond anything foreseen during Weimar.

In the years before Locarno, France felt, if anything, an even stronger stake in strict long-term implementation of Versailles, which it saw as critical for its security. Great Britain felt no comparably strong stakes in specific compliance outcomes. Its primary aim was stability on the continent, and especially in Germany. That inclined the British to be lenient with the Weimar Government, in order to shore it up domestically. It also made them suspicious of French ambitions for unrivalled power on the continent.<sup>62</sup> At the same time, Britain generally wanted to make common cause with France on Versailles compliance issues, while France felt, especially after the Ruhr occupation, that it could not act independently of Britain.

After Locarno, France increasingly shared the United Kingdom's relaxed approach on compliance. By 1935, both countries appeared to have just as strong a stake in avoiding war as Hitler had in his abhorrent ambitions. The result, of course, was catastrophic.

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<sup>61</sup> France and Belgium occupied the Ruhr because of German failure to make reparations payments, not for any violation of the Versailles disarmament clauses.

<sup>62</sup> Barros, op. cit., pp. 307-308, 318-319.

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**12. On the whole, why did deterrence of the violation fail? Why did efforts to restore compliance succeed or fail?**

The difference in perceived stakes among the main states concerned appears to have been the main reason why both deterrence and enforcement failed in Germany. During the Weimar Period, nothing short of military occupation was particularly effective in inducing compliance. However, the United Kingdom probably was correct in fearing that occupation over the long term would seriously destabilize Germany. The British feared a communist takeover; we know in hindsight that a far-right ascendance was much more likely – and in fact happened just six years after the last Allied troops departed Germany. After Hitler came to power, early military action might also have been effective, at least in maintaining a demilitarized Rhineland. However, it is difficult to imagine any action short of armed conflict that could have ended Hitler's rearmament program and created satisfactory, if less than perfect, compliance with Versailles.



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## Chapter Three: Krasnoyarsk Radar Case Study

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### ***Case Study Two: United States versus the Soviet Krasnoyarsk radar violation of the Anti-Ballistic Missile (ABM) Treaty, 1983-1989***

#### **Overview**

The Treaty between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems (ABM Treaty) was signed in Moscow on 26 May 1972, and entered into force on 3 October of the same year.<sup>63</sup> On 13 December 2001, the United States gave notice to the Governments of Russia, Ukraine, Belarus and Kazakhstan (the successor states to the Soviet Union for the Treaty) of its intent to withdraw from the Treaty, as provided in Article XV, because “extraordinary events related to the subject matter of this Treaty have jeopardized its supreme interests.”<sup>64</sup> The Treaty thereby ceased to exist on 13 June 2002. The end of the ABM Treaty did not affect, and was in no way related to, the subject of this case study -- the Krasnoyarsk radar violation of several years earlier.

The overarching obligation of the Treaty, in Article I, was “not to deploy ABM systems for a defense of the territory of its country and not to provide a base for such a defense, and not to deploy ABM systems for defense of an individual region except as provided for in Article III of the Treaty.” Article III allowed for two ABM deployment sites of 100 launchers each – one around the national capital and one around an intercontinental ballistic missile (ICBM) silo field; a 1974 protocol limited each party to one ABM site, defending either the national capital or an ICBM field. U.S. opposition to territorial or nationwide defense<sup>65</sup> was based primarily on the concept that U.S.-Soviet strategic and crisis stability would be better preserved if each side was vulnerable to a devastating retaliatory second strike, and thus would have no incentive to strike first. A subsidiary motive by many Treaty supporters in the United States was to prevent an offense-defense arms race by eliminating ballistic missile defense (BMD) as a motivation for Soviet offensive strategic missile deployment. That goal, however, was not realized as the tight restrictions on strategic ballistic missile defenses had little or no moderating impact on Soviet offensive programs. Indeed, senior Soviet military leaders subsequently indicated that the ABM Treaty allowed the Soviet Union to concentrate its resources on offensive missiles.<sup>66</sup>

Throughout the life of the ABM Treaty and since, the Soviet Union maintained, and has modernized, a 100-launcher ABM defense around Moscow. The single U.S. site, at Grand Forks,

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<sup>63</sup> “Treaty between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems,” available at <https://www.state.gov>. The Treaty was of indefinite duration.

<sup>64</sup> White House, Office of the Press Secretary, “President Discusses National Missile Defense,” December 13, 2001, available at <https://georgewbush-whitehouse.archives.gov>.

<sup>65</sup> The terms are used interchangeably throughout this report.

<sup>66</sup> William E. Odom, *The Collapse of the Soviet Military* (New Haven: Yale University Press, 1998), p. 71.

North Dakota, was much shorter-lived. It attained full operational capability on 1 October 1975; one day later, the Congress voted to terminate the facility, and it shut down on 10 February 1976.<sup>67</sup>

LPARs for ballistic missile detection and tracking were considered the long-lead-time components for the Treaty-prohibited defense of the national territory.

While sizeable numbers of BMW [ballistic missile warning] launchers, interceptors, and engagement radars could be manufactured and stockpiled clandestinely and deployed rather rapidly, the LPARs that would supply BMD batteries (or BMD-capable surface-to-air missile [SAM] systems) with tracking data would require considerable time to construct and would be impossible to conceal from U.S. surveillance satellites. Because of their size and complexity, Soviet LPARs take approximately five to seven years to build. Each radar is a huge installation.... For these reasons, LPARs were identified as long lead-time components of a nationwide defense which could be closely monitored by the United States.<sup>68</sup>

The Treaty provided that each Party would not “deploy in the future radars for early warning of strategic ballistic missile attack except at locations along the periphery of its national territory and oriented outward.”<sup>69</sup> The purpose was to allow for stabilizing, legitimate early warning capabilities, while limiting the tracking and handoff capability that could allow them an active missile defense role.<sup>70</sup> ABM radars, whose numbers and capabilities were specified, were allowed only at the permitted ABM deployment sites.<sup>71</sup> The United States had initially sought the right to approve construction of any LPARs for other purposes (such as space track), and then asked for advance notification; both were refused.<sup>72</sup> The Treaty does not mention, and therefore does not constrain, LPARs other than for early warning and ABM.

U.S. optimism was misplaced about its ability to detect quickly any Soviet LPAR construction. In July 1983, the Intelligence Community discovered the LPAR under construction near the city of Krasnoyarsk in Siberia.<sup>73</sup> The decision to build the radar reportedly was made in 1979.<sup>74</sup> Although we do not know when ground was broken, analysts estimated that construction started in 1981 or 1982. We also do not know why it took U.S. intelligence a year or more to find this huge installation. Some observers believe the delay was caused by inadequate U.S. surveillance capabilities.<sup>75</sup> Whether or not that was the case, the intelligence community would have seen no

<sup>67</sup> Donald R. Buxom, *Origins of the Strategic Defense Initiative: Ballistic Missile Defense, 1944-1983* (Washington, DC: Strategic Defense Initiative Organization, December 1989), available at <http://www.dtic.mil>, pp. 171-181.

<sup>68</sup> Carnes Lord and Roger Barnett, *Soviet Arms Control Violations and United States Compliance Policy* (Fairfax, VA: National Security Research, August 1988), p. 225.

<sup>69</sup> Article VI, “Treaty between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems,” op. cit.

<sup>70</sup> Lord and Barnett, op. cit., p. 230.

<sup>71</sup> Article III, “Treaty between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems,” op. cit.

<sup>72</sup> Lord and Barnett, op. cit., pp. 229-230.

<sup>73</sup> Central Intelligence Agency, Directorate of Intelligence, *The Krasnoyarsk Radar: Closing the Final Gap in Coverage for Ballistic Missile Early Warning*, June 19, 1986, CIA Special Collections Release as Sanitized 2000, p. 1. The Krasnoyarsk radar is also occasionally identified as the Yeniseysk (reportedly the original Soviet name, after the region) or Abalakovo (after the nearest village) radar. The U.S. chose to name it after the nearest large city. That became the most common designation, even in the Soviet Union and Russia. Raymond Garthoff, “Case of the Wandering Radar,” *Bulletin of the Atomic Scientists*, Vol. 47, No. 6 (July-August 1991), p. 7.

<sup>74</sup> Garthoff, op. cit., p. 8.

<sup>75</sup> Lord and Barnett, op. cit., p. 239.

reason to put high priority on searching the region where the radar was located. The installation could not be hidden, even in early construction stages. The transmitter building grew to approximately 180 feet tall, 500 feet long and 300 feet wide; the receiver was just as long and wide, but even taller, at 270 feet.<sup>76</sup>

The Krasnoyarsk radar was neither located on the periphery of Soviet territory nor oriented outward, as required by the Treaty for early warning LPARs. Instead, it was over 700 km from the nearest border (to the south), and oriented northeast. The radar clearly violated the Treaty unless it was to operate for a purpose other than ballistic missile detection and tracking. As a result, the Soviets for several years argued that the radar was for space track – but its design, location and orientation were clearly not well suited for that purpose. Even critics of Reagan Administration compliance policy declared the space track justification “not convincing.”<sup>77</sup>

In 1986, the Central Intelligence Agency (CIA) found that “the primary mission of this radar is ballistic missile detection and tracking. Further, we believe the Krasnoyarsk LPAR closes the final gap in the Soviet ballistic missile early warning (BMEW) and tracking network that includes LPARs and the older Hen House type radars.” The CIA report – or at least those portions made public – did not address whether the Krasnoyarsk radar was well suited for a battle management role, which would greatly enhance its potential contribution to a territorial ballistic missile defense.<sup>78</sup>

The first Presidential Report to Congress on Soviet arms control compliance after the discovery of the Krasnoyarsk radar slightly hedged the U.S. judgment on its compliance, finding that the “new radar under construction at Krasnoyarsk *almost certainly* [emphasis added] constitutes a violation of legal obligations under the Anti-Ballistic Missile Treaty of 1972 in that in its associated siting, orientation, and capability, it is prohibited by this Treaty.”<sup>79</sup> This report did not address the question of Soviet compliance with the obligation in ABM Treaty Article 1 “not to deploy ABM systems for a defense of the territory of the country and not to provide a base for such defense.”

The next noncompliance report, in February 1985, went further. It found the Krasnoyarsk radar to be a violation, and addressed several other ABM Treaty issues. Evidence regarding mobility of new ABM systems was found to be ambiguous, and that for concurrent testing of ABM and SAM components insufficient to allow a full assessment.<sup>80</sup> Moreover, the report addressed

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<sup>76</sup> Ibid., p. 236.

<sup>77</sup> See, for example, the discussion of a 1987 Congressional visit to the radar in William J. Broad, “The Secrets of Krasnoyarsk; Soviet Eye on the Sky, Questions of Trust,” *New York Times*, September 20, 1987.

<sup>78</sup> Central Intelligence Agency, op. cit., p. 1.

<sup>79</sup> The White House, Office of the Press Secretary, *The President's Report to the Congress on Soviet Noncompliance with Arms Control Agreements*, January 31, 1984, available at <https://www.cia.gov>, p. 4. This, and the other noncompliance reports cited here, are the unclassified versions. It is worth noting that the ABM Treaty findings in the three Reagan Administration noncompliance reports which have been declassified were identical to their unclassified counterparts. See The White House, Washington, National Security Decision Directive 121, *Soviet Noncompliance with Arms Control Agreements*, January 16, 1984, declassified on February 8, 1996; National Security Decision Directive 202, *Soviet Noncompliance with Arms Control Agreements*, December 20, 1985, partially declassified on May 24, 1995; and National Security Decision Directive 260, *Soviet Noncompliance with Arms Control Agreements*, February 17, 1987, declassified on January 7, 1997, all available at <https://reaganlibrary.edu>. However, we know that the classified and unclassified versions of at least one Reagan Administration noncompliance report – that of February 1985 – differed in at least two respects; as discussed below, the February 1985 classified report raised the issues of ABM capability of new SAM systems and rapid reload of ABM launchers, but those were not included in the unclassified report until December 1985.

<sup>80</sup> In Article V (1) of the ABM Treaty, the Parties committed “not to deploy, test, or deploy ABM systems or components which are sea-based, air-based, space-based, or mobile land-based.” Concurrent testing of air defense radars and ABM components co-located at a test range was prohibited by Standing Consultative Commission, “Agreed Statement Regarding Certain Provisions of Articles II, IV, and VI of the Treaty between the United States of America and the Union of Soviet Socialist Republics on the



territorial defense for the first time: “the aggregate of the Soviet Union’s ABM and ABM-related actions suggest that the USSR may be preparing an ABM defense of its national territory.” Those “ABM and ABM-related actions” were not specified.<sup>81</sup>

In the December 1985 noncompliance report, the Krasnoyarsk finding stated for the first time that the radar “and other ABM-related Soviet activities suggest that the USSR may be preparing an ABM defense of its national territory.” It also added two new issues – ABM capability of new SAM systems and rapid reload of ABM launchers – that had been addressed in the classified February 1985 report.<sup>82</sup> In addition, it specified at least some of the actions which suggested that the USSR “may be preparing” a territorial defense: “e.g., radar construction, concurrent testing, SAM upgrade, ABM rapid reload and ABM mobility.” The mention of “radar construction” likely was meant to capture concerns not just about the Krasnoyarsk radar, but also about the link between Soviet violations and the network of modern early-warning LPARs planned or under construction which would not violate the Treaty – unless they helped to provide the basis for a territorial defense.<sup>83</sup> Perhaps even more important, the introductory section of the report for the first time included strong, detailed language about the significance of the Krasnoyarsk violation:

The radar under construction near Krasnoyarsk in Siberia is disturbing for both political and military reasons. Politically, the radar demonstrates that the Soviets are capable of violating arms control obligations and commitments even when they are negotiating with the United States or when they know we will detect a violation. ...

Militarily, the Krasnoyarsk radar violation goes to the heart of the ABM Treaty. Large phased-array radars (LPARs) like that under construction near Krasnoyarsk were recognized during the ABM Treaty negotiations as the critical, long lead-time element of a nationwide ABM defense.

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The Krasnoyarsk radar appears even more menacing when considered in the context of other Soviet ABM-related activities. Together they cause concern that the Soviet Union may be preparing an ABM territorial defense. Some of these activities, such as permitted LPARs and the Moscow ABM deployment area, are consistent with the ABM Treaty. Others involve potential or possible Soviet violations or other ambiguous activity...

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Limitation of Anti-Ballistic Missile Systems of May 26, 1972, and the Utilization of Air Defense Radars at the Test Ranges Referred to in Article IV of that Treaty,” November 1, 1978. *Treaty between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems*, op. cit.

<sup>81</sup> The White House, Office of the Press Secretary, *The President’s Unclassified Report to the Congress on Soviet Noncompliance with Arms Control Agreements*, February 1, 1985, available at <http://insidethecoldwar.org>, pp. 8-9.

<sup>82</sup> In Article V(2) of the ABM Treaty, the Parties undertook “not to develop, test, or deploy automatic or semi-automatic or other similar systems for rapid reload of ABM launchers.” Article VI(a) prohibited giving “missiles, launchers, or radars, other than ABM interceptor missiles, ABM launchers, or ABM radars, capabilities to counter strategic ballistic missiles or their elements in flight trajectory, and not to test them in an ABM mode.” *Treaty between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems*, op. cit.

<sup>83</sup> The White House, Office of the Press Secretary, *The President’s Unclassified Report on Soviet Noncompliance with Arms Control Agreements*, December 23, 1985, available at <http://www.presidency.ucsb.edu>, pp. 6-8. In the March 1992 noncompliance report, the George H.W. Bush Administration raised the possibility of a Treaty violation by the “legal” Pechora-class LPARs because they provided handover data to the Moscow ABM system that were suitable for target acquisition. In the January 1993 report, the Bush Administration found that the practice did not violate the Treaty. See U.S. Arms Control and Disarmament Agency, *Adherence to and Compliance with Arms Control Agreements and The President’s Report to Congress on Soviet Noncompliance with Arms Control Agreements*, January 14, 1993, available at <https://babel.hathitrust.org>, pp. 11-12.

Soviet deployment of an ABM territorial defense contrary to the ABM Treaty would have profound implications for Western security and the vital East-West strategic balance. A unilateral Soviet territorial ABM capability acquired in violation of the ABM Treaty could erode our deterrent and leave doubts about its credibility. Such a capability might encourage the Soviets to take increased risks in crises, thus degrading crisis stability.<sup>84</sup>

The next two noncompliance reports, in March and December 1987, reaffirmed the earlier ABM Treaty findings. The December report also added a new violation – the movement of two ABM components—a Flat Twin radar and vans for the Pawn Shop missile guidance radars -- from a permitted test range to a prohibited location at Gomel. Under Articles III-IV of the Treaty, ABM components could be located only at an allowed deployment site or at an existing or agreed test range. These radars could provide part of a mobile ABM system that could be used, in conjunction with Soviet LPARs, to provide a nationwide defense. This violation was therefore added to the list of activities suggesting preparations for territorial defense.<sup>85</sup> The next year, the Administration strengthened its finding on Krasnoyarsk. Instead of being deemed “a violation of its [the USSR’s] legal obligations under the Anti-Ballistic Missile Treaty,” it was now judged “a significant violation of a central element” of the Treaty.<sup>86</sup>

The Reagan Administration vigorously pursued the Krasnoyarsk violation with the Soviet Government. It was first raised in the Standing Consultative Commission (SCC), the ABM Treaty implementation body, a few months after the radar’s discovery in Summer 1983. The Soviet delegation rejected the U.S. charges, insisting that the radar was for space track, and that in any case compliance determinations would not be possible before the radar began to operate.<sup>87</sup> The SCC and the quinquennial ABM Treaty Review in 1988 failed to advance the Krasnoyarsk radar issue toward resolution.

Beginning in January 1985, bilateral consideration of the Krasnoyarsk radar shifted gradually to the ministerial and Presidential levels. Foreign Minister Shevardnadze and General Secretary Gorbachev, who came into office in March 1985, did not appear to repeat the space track argument in their private discussions with Secretary of State Shultz and President Reagan. Instead, they floated various proposals to resolve U.S.-Soviet differences over the issue. An early idea, initially mentioned “informally” in the Nuclear and Space Talks in October 1985 and raised continuously by Shevardnadze through at least 1988, was to cease construction at Krasnoyarsk if the United States would do the same with LPAR construction at Thule, Greenland and Fylingdales, the United Kingdom. The Soviets insisted that the Thule and Fylingdales radars were illegal, because they were not located on the periphery of U.S. territory. The United States countered that the Thule and Fylingdales radars were “grandfathered” under the ABM Treaty, and were simply being modernized in accordance with the Treaty terms.<sup>88</sup>

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<sup>84</sup> *Ibid.*, p. 3.

<sup>85</sup> The White House, Office of the Press Secretary, *The President’s Unclassified Report on Soviet Noncompliance with Arms Control Agreements*, December 2, 1987, available at <https://reaganlibrary.edu>, pp. 9-10.

<sup>86</sup> The White House, Office of the Press Secretary, *The President’s Unclassified Report on Soviet Noncompliance with Arms Control Agreements*, December 2, 1988, p. 16.

<sup>87</sup> “Decisions Regarding Instructions for the SCC Session Beginning October 9, 1985,” September 28, 1985, attachment to *Memorandum for Director of Central Intelligence, From Chief, Arms Control Intelligence Staff, Subject: SCC-XXIX Decision Document*, 7 October 1985, Sanitized Copy Approved for Release 2011/06/04, available at [www.cia.gov](http://www.cia.gov), p. 33.

<sup>88</sup> See, for example, Department of State Briefing Paper, *The Geneva Talks*, n.d. [October 16, 1985], p. 2; and Department of State, Executive Secretariat, “Memorandum of Conversation, The Secretary’s Meeting with Shevardnadze – Second Small Group Meeting: Arms Control Issues,” Washington, September 22, 1988, in James Graham Wilson, ed., *Foreign Relations of the United States*,

At the Reykjavik Summit in October 1986, Gorbachev proposed that the sides commit not to exercise their right of withdrawal from the ABM Treaty, provided in Article XV of the Treaty. President Reagan countered with a proposal for a 10-year nonwithdrawal agreement, in the context of a Strategic Arms Reduction Treaty (START), after which either side could deploy defenses as it chose.<sup>89</sup> During the Moscow Summit in May 1988, the President told Gorbachev that “he could not agree to a nonwithdrawal provision until the Soviet Union had corrected its violations of the ABM Treaty.”<sup>90</sup> Gorbachev offered to “dismantle its [the Krasnoyarsk radar’s] equipment” if the sides reached a nonwithdrawal agreement.<sup>91</sup> That would leave the transmitter, receiver and other buildings intact, and was completely unacceptable to the United States.

In one final effort to salvage the Krasnoyarsk radar, Gorbachev proposed in September 1988 to convert the facility into a “Center for International Cooperation in Peaceful Space Activities,” and to invite American scientists to the site to discuss the issue.<sup>92</sup> The proposal was a non-starter: the radar site was an impractical, inhospitable one for an international center, and the proposal did not meet the U.S. requirements for dismantlement.

Finally, in September 1989, Gorbachev wrote to President George H.W. Bush that the Soviet Union would dismantle the Krasnoyarsk radar without conditions.<sup>93</sup> One month later, in a speech to the Supreme Soviet, Shevardnadze announced that the radar was a “clear violation” of the ABM Treaty and would be dismantled. In his speech, Shevardnadze sought to attribute the decision to construct the radar to the Soviet military, claiming that it took the political leadership four years (not coincidentally the tenure of the Gorbachev regime) to discover the truth.<sup>94</sup>

That last assertion begs belief. While the decision to locate the radar at Krasnoyarsk was taken years before Gorbachev came to power, it reportedly was proposed jointly by the Defense Ministry, Radioelectronic Ministry and Military-Industrial Commission of the Council of Ministers, and approved by the Politburo. Then-Foreign Minister Andrei Gromyko reportedly was kept fully aware of the program.<sup>95</sup> That hardly constituted a secret decision by rogue elements of the government. It is improbable that the new General Secretary and Foreign Minister would not have been informed of the decision, especially in light of the high-level U.S. attention to the issue that began with the February 1984 noncompliance report, more than a year before they came to power. Moreover, it seems unlikely that they would have defended the radar for so many years in ignorance of its function – all the more so because they did not emphasize the space-track

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1981-1988, Volume VI – Soviet Union October 1986-January 1989 (Washington: United States Government Publishing Office, 2016), pp. 1157-1159.

<sup>89</sup> The White House, *National Security Decision Directive 250: Post-Reykjavik Follow-Up*, November 3, 1986, declassified on June 10, 2011, pp. 1-3, available at <https://reaganlibrary.edu>.

<sup>90</sup> The White House, *Memorandum of Conversation, Subject: First Plenary Meeting*, May 30, 1988, declassified on August 29, 2000, p. 6, available at <https://reaganlibrary.edu>.

<sup>91</sup> “Letter from Soviet General Secretary Gorbachev to President Reagan, Moscow, September 13, 1988,” attachment to “Memorandum from Secretary of State Shultz to President Reagan, Washington, September 16, 1988,” in Wilson, ed., op. cit., p. 1131.

<sup>92</sup> *Idem*.

<sup>93</sup> The White House, *Memorandum of Conversation: Meeting with Eduard Shevardnadze, Foreign Minister of the Soviet Union*, September 21, 1989, declassified on August 21, 2009, p. 4, available at <https://bush41library.tamu.edu>.

<sup>94</sup> John Van Oudenaren, *The Role of Shevardnadze and the Ministry of Foreign Affairs in the Making of Soviet Defense and Arms Control Policy* (Santa Monica: RAND National Defense Research Institute, July 1990), p. 46.

<sup>95</sup> Aleksandr G. Savelyev and Nikolay Detinov, “View from Russia: The Krasnoyarsk Affair,” *Comparative Strategy*, Vol. 12, No. 3 (1993), p. 346.

argument. Finally, Shevardnadze co-signed a November 1987 memorandum providing negotiating guidance on the Soviet position on Krasnoyarsk. The other signatories were the heads of the other “power ministries” -- Defense Ministry, KGB, State Economic Planning Committee – as well as the Central Committee defense industry and international departments.<sup>96</sup>

We likely will never know why or precisely for what specific functions(s) the Soviet Union decided to locate the LPAR at Krasnoyarsk. Most former Soviet officials maintain that it was for early warning, designed to close a gap in BMEW coverage. They claim that they originally chose a location at Norilsk in the far northeast that would be both ABM Treaty-compliant and effective in closing the BMEWs gap. However, the site was above the permafrost, where the radar would have been difficult and expensive to construct. Its remote location would have also made it inconvenient to maintain and operate, even if the requisite road and rail connections had been built. These same commentators claim that the Soviet Government knew the Krasnoyarsk site would violate the ABM Treaty, but doubted that the United States would see it as more than a technical violation.<sup>97</sup>

From the time the Krasnoyarsk construction was discovered, U.S. Government agencies were unanimous that it violated the ABM Treaty. However, they differed on the reasons for the site and its battle management potential. Defense Department officials in particular dismissed the production costs/difficulty arguments used to justify the choice of Krasnoyarsk. They found the site to be optimized for battle management, in conjunction with the other Pechora-class LPARs. Although that accusation was never made officially, the combined capabilities of the Krasnoyarsk radar were the basis for the concern that it would provide the central, indispensable element of a national ABM defense.<sup>98</sup>

Some commentators outside of the U.S. Executive Branch disagreed. For example, the Congressional visitors to Krasnoyarsk in 1987 found the radar ill-suited for either battle management or space track. They also claimed that it was destined to be an early-warning radar, but at such an early stage of construction that it could not yet be considered a treaty violation.<sup>99</sup> That view was clearly at odds with the Treaty negotiating record, and with the emphasis on detecting construction of illegal LPARs well before they could allow Soviet breakout.<sup>100</sup>

The United States held steadfastly throughout the period of this case study to its position that the only way to resolve the Krasnoyarsk violation was to dismantle it. Of the transmitter and receiver buildings, only the foundations could remain.<sup>101</sup> Reported proposals from within U.S. Government agencies for more limited outcomes were never adopted as official policy.<sup>102</sup> That resistance to compromise, and continued pressure at the highest levels, combined with the Gorbachev

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<sup>96</sup> “Considerations on issues relating to ‘violations’ of the ABM Treaty: On the Krasnoyarsk Radar,” November 21, 1987, in The National Security Archive, *The Glasnost Tours: Breaking Down Soviet Military Secrecy*, April 29, 2010, Document 9, available at [nsarchive2.gwu.edu](http://nsarchive2.gwu.edu).

<sup>97</sup> Savelyev and Detinov, op. cit., pp. 345-346, and Garthoff, op. cit., pp. 7-8.

<sup>98</sup> For a detailed discussion of this issue, see Lord and Barnett, op. cit., pp. 253-261.

<sup>99</sup> Bob Carr, “Report on Krasnoyarsk,” *Congressional Record*, December 10, 1987, p. 35009, and Thomas J. Downey, Bob Carr and Jim Moody, “Final Report to the Speaker of the House on Fact-Finding Trip to the Soviet Union, August 29 – September 7, 1987,” *Congressional Record*, December 10, 1987, pp. 35009-35012.

<sup>100</sup> See, for example, John Rhinelander, in House Foreign Affairs Committee, Hearings, *Review of ABM Treaty Interpretation Dispute and SDI* (Washington, DC: Government Publishing Office, 1987), p. 50.

<sup>101</sup> See, for example, The White House, *National Security Directive 36: United States Arms Control Policy*, February 6, 1990, declassified on March 22, 2010, p. 6, available at <https://bush41library.tamu.edu>.

<sup>102</sup> See Lord and Barnett, op. cit., pp. 277-278.

Government's determination to forge closer relations with the West including through arms control, ultimately proved effective in persuading the Soviets to abandon the Krasnoyarsk LPAR. "We must remember that it was not by shying away from the fact of a violation that we have moved toward its positive resolution."<sup>103</sup>

Still, the United States did little to threaten consequences if the Soviet Union continued to pursue the Krasnoyarsk radar and other treaty violations. In June 1985, the President tasked the Department of Defense to assess potential responses to Soviet arms control violations. The focus was on strategic offensive forces:

I direct the Department of Defense to conduct a comprehensive assessment aimed at identifying specific actions which the United States could take to accelerate or augment as necessary the U.S. strategic modernization program in proportionate response to, and as a hedge against the military consequences of, those Soviet violations of existing arms agreements which the Soviets fail to correct.<sup>104</sup>

Two Defense Department assessments were concluded in response to this tasking: "Response to Soviet Violations Policy (RSVP) I and II." The President publicly announced his choice of responses on May 27, 1986. The primary response was to call for continuation of the strategic modernization and Strategic Defense Initiative (SDI) programs. The President also directed a Defense Department study of further ICBM options and acceleration of the advanced cruise missile program. Of greatest note, he abandoned the interim restraint policy<sup>105</sup> – a step advocated by the Defense Department and Arms Control and Disarmament Agency (ACDA), but opposed by the State Department.<sup>106</sup> Yet the United States would continue to exercise restraint: "Assuming no significant change in the threat we face...the United States will not deploy more strategic nuclear delivery vehicles [or] ... more strategic ballistic missile warheads than does the Soviet Union." The President also called on the Soviet Union "to join us now in a framework of truly mutual restraint."<sup>107</sup> There were no U.S. responses tailored specifically to the Krasnoyarsk violation.

While the United States held firm in demanding the full dismantlement of the Krasnoyarsk radar, it did not do so regarding the one diplomatic threat it made to induce Soviet compliance. In the March 1987 noncompliance report, the President stated that: "Compliance with past arms control commitments is an essential prerequisite for future arms control agreements."<sup>108</sup> Yet nine months later, in December 1987, the United States and Soviet Union signed the INF Treaty.

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<sup>103</sup> The White House, Office of the Press Secretary, *Soviet Noncompliance with Arms Control Agreements*, February 23, 1990, available at <https://bush41library.tamu.edu>, p. 3.

<sup>104</sup> The White House, *National Security Decision Directive 173: Building an Interim Framework for Mutual Restraint*, June 10, 1985, declassified on November 27, 1992, p. 6, available at <https://reaganlibrary.archives.edu>.

<sup>105</sup> The interim restraint policy was adopted in 1982. Under this policy, although the President had called the 1979 SALT II Treaty fatally flawed, and would not pursue its ratification, the United States would continue to abide by its provisions as long as the Soviet Union did so and the sides were negotiating a new START Treaty.

<sup>106</sup> The White House, *Minutes of the National Security Planning Group: Meeting on RSVP Options*, March 25, 1986, and National Security Council, *National Security Planning Group Meeting*, April 16, 1986, both declassified on December 21, 2005, available at [www.thereaganfiles.com](http://www.thereaganfiles.com).

<sup>107</sup> Ronald Reagan, "Statement on Soviet and United States Compliance with Arms Control Agreements," May 27, 1986, available at <https://reaganlibrary.archives.gov>.

<sup>108</sup> The White House, Office of the Press Secretary, *The President's Unclassified Report on Soviet Noncompliance with Arms Control Agreements*, March 10, 1987, available at <https://www.presidency.ucsb.edu>, p. 3.

Thereafter the U.S. Government continued to link the Defense and Space and START agreements to resolution of compliance issues. For example, at the August 1988 ABM Treaty Review Conference, the United States “made clear that the continuing existence of the Krasnoyarsk radar makes it impossible to conclude any future arms agreements in the START or Defense and Space areas.”<sup>109</sup> That condition was relaxed (although not publicly) for START by 1990: “The U.S. will not postpone completion of a START Treaty that is otherwise ready to be signed, provided that the Soviets have fully accepted our understanding concerning the requirements related to the elimination of the Krasnoyarsk violation, and that they have made reasonable progress on the dismantling of the Krasnoyarsk radar.”<sup>110</sup> It is important to note that this was after the Soviet admission of the Krasnoyarsk violation and agreement to dismantle the radar. Sixteen months later, President Bush and General Secretary Gorbachev signed the START Treaty.

In November 1991, the Senate issued a soft warning to the Administration on the Krasnoyarsk-START link. In the Resolution of Advice and Consent to Ratification of the Treaty on Conventional Armed Forces in Europe (CFE), the Senate stated that “it will take into account, as part of its consideration of the START Treaty, whether...the large phased-array radar located at Krasnoyarsk, which constitutes a violation of the 1972 ABM Treaty, has been dismantled in compliance with such treaty.”<sup>111</sup> By this stage, there was Congressional unanimity that the Krasnoyarsk radar should be dismantled, as the Soviet Government had promised.

The Reagan Administration engaged in an intensive public and allied diplomacy effort to build both support for SDI and opposition to Soviet ABM Treaty violations. Interagency teams periodically visited NATO and East Asian allies, China and Australia to brief on both issues. In October 1985, the Departments of State and Defense issued a glossy, widely-circulated brochure entitled *Soviet Strategic Defense Programs*. Those efforts were not particularly effective, at least with NATO Allies. Although allies agreed that Krasnoyarsk was an illegal early warning radar, they appeared unimpressed with United States arguments about preparations for territorial defense.<sup>112</sup> In the end, allied views had little or no effect on the outcome of the issue.

The February 1990 U.S. noncompliance report, the first after Shevardnadze’s Supreme Soviet speech, welcomed the Soviet admission of the Krasnoyarsk violation and decision to dismantle the radar. It also reported that the Soviets had destroyed the Flat Twin radar at Gomel and the Pawn Shop vans at Gomel and Vnukovo.<sup>113</sup> On the less positive side, the report noted that Krasnoyarsk dismantlement had not yet started, although preparations “may have begun.”<sup>114</sup> A

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<sup>109</sup> “United States Unilateral Statement Following ABM Treaty Review,” Geneva, Switzerland, August 31, 1988, available at <https://2009-2017.state.gov>. The Nuclear and Space Talks (NST), which began in March 1985, formed the umbrella for three different U.S.-Soviet negotiations, on INF, START and Defense and Space arms control. Initially, the Soviet Union insisted that none of the agreements could be completed until all three were. The aim was to induce the United States to accept a Defense and Space agreement that would severely constrain the U.S. Strategic Defense Initiative (SDI). Gorbachev dropped that linkage at the Reykjavik Summit in October 1986. The INF and START Treaties were signed in 1987 and 1991, respectively, but the sides never came to agreement on Defense and Space, given their widely divergent aims regarding strategic defense and space arms control.

<sup>110</sup> The White House, Office of the Press Secretary, *National Security Directive 36*, op. cit., pp. 6-7.

<sup>111</sup> Treaty on Conventional Armed Forces in Europe (CFE), “Text – Resolution of Ratification: Senate Consideration of Treaty Document 102-8,” available at <https://www.congress.gov>.

<sup>112</sup> David S. Yost, *Soviet Ballistic Missile Defense and the Western Alliance* (Cambridge, MA: Harvard University Press, 1988).

<sup>113</sup> The White House, Office of the Press Secretary, *Soviet Noncompliance with Arms Control Agreements*, February 23, 1990, op. cit., pp. 2-3.

<sup>114</sup> *Ibid.*, p. 4.

year later, dismantlement was underway, but at a slower pace “than the United States had hoped.”<sup>115</sup>

In January 1993, the George H.W. Bush Administration – in its last compliance report and the first after the fall of the Soviet Union – reported that: “In April 1992, the United States, in light of the changed political and security relationship between the two countries, agreed in principle to a Russian request to convert the Krasnoyarsk radar (which it has been dismantling, as an ABM Treaty violation), into a furniture factory.”<sup>116</sup> Press reports indicated that the transmitter and receiver buildings were significantly reduced by February 1993; the receiver building was down from 19 to five stories, and even less was left of the smaller transmitter building.<sup>117</sup>

The next compliance report, the first of the Clinton Administration, reported that Russia had not provided “any further information on [Krasnoyarsk] conversion plans and the United States is not aware that any actual conversion has taken place.”<sup>118</sup> There was no further mention of Krasnoyarsk in subsequent unclassified compliance reports. The next, and last, statement on ABM Treaty compliance reported that in 1998, “the United States detected no activities on the part of the states of the former Soviet Union that gave rise to questions regarding compliance with the provisions of the ABM Treaty.”<sup>119</sup> The Krasnoyarsk issue was over. Completely unrelated, the Treaty would end in 2002.

## Questions

### **1. Did the character of the government committing the violation incline it toward breaching the agreement? (For example, authoritarian regimes – unaccountable, secretive, deceptive, byzantine, aggressive – may be prone to noncompliance.)**

The character of the Soviet regime in the late 1970s-early 1980s definitely inclined it to noncompliance with arms control agreements. The early Reagan Administration noncompliance reports included not only the many ABM Treaty violations discussed in this case study, but also violations of the Geneva Protocol on chemical weapons, the Helsinki Final Act, the SALT I Interim Agreement and the SALT II Treaty.<sup>120</sup> The breadth of noncompliance indicates that the Soviet Government found it relatively easy to violate arms control commitments if they were inconvenient (as would be the case if Russian explanations for the Krasnoyarsk decision are correct) and/or stood in the way of military aims (as would be the case if the Krasnoyarsk location was chosen for battle management as well as early warning reasons). The Politburo decision to approve the

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<sup>115</sup> The White House, Office of the Press Secretary, *Soviet Noncompliance with Arms Control Agreements*, February 6, 1991, p. 3.

<sup>116</sup> The U.S. Arms Control and Disarmament Agency, *Adherence to and Compliance with Arms Control Agreements and The President's Report to Congress on Soviet Noncompliance with Arms Control Agreements*, January 14, 1993, available at <https://babel.hathitrust.org>, p. 12. During the period of this report, Congress ceased to require the Soviet noncompliance report, and called instead for a broader compliance report.

<sup>117</sup> James P. Gallagher, “Cold War Radar Threat Becomes a Ruined Relic,” *Chicago Tribune*, February 28, 1993, and “Yeniseysk (Krasnoyarsk),” [www.globalsecurity.org](http://www.globalsecurity.org).

<sup>118</sup> The U.S. Arms Control and Disarmament Agency, *Adherence to and Compliance with Arms Control Agreements*, June 23, 1994, available at <http://www.dtic.mil>, p. 9.

<sup>119</sup> Department of State, *Adherence to and Compliance with Arms Control Agreements: 1998 Report Submitted to the Congress*, Washington, DC, n.d. [probably 1999], p. 4, available at <https://1997-2001.state.gov>. Commercial satellite photography in 2017 revealed that at some point the radar was completely dismantled.

<sup>120</sup> The last two were not in effect during the period of this case study; the interim agreement had expired, and SALT II had not been ratified. However, under the Interim Restraint policy until May 1986, the Reagan Administration complied with their provisions; the Soviet Union agreed to reciprocate, but did not actually do so.

Krasnoyarsk construction may also have demonstrated the internal power of the Soviet military and military industry; at least before Gorbachev came to power, their proposals tended to be accepted.

The Gorbachev Government ultimately opted for improved relations with the United States over retention of the Krasnoyarsk radar. The decision to dismantle Krasnoyarsk was also consistent with the political leadership's determination to curb military spending. Further, its *glasnost* policy made it more difficult systematically to violate arms control treaties in secret. That openness was greatly expanded after the fall of the Soviet Union, with independent media scrutinizing the Yeltsin Government's actions. That does not mean that all arms control violations ceased, but they were reduced. After Vladimir Putin came to power in 2000, state control of the media, lack of government accountability and systematic deception gradually but inexorably returned – along with a renewed cavalier attitude to compliance.

**2. *What did the violator hope to gain? What consequences did it anticipate? No response, with the violation undetected or unpunished? Penalties that would be acceptable in light of the expected gain?***

The Russians probably hoped to gain one or both of two possible benefits from the decision to locate the illegal LPAR at Krasnoyarsk. First, if the usual Russian explanation of the decision is correct, the Soviet military hoped to avoid the extra financial costs and difficulty of construction at Norilsk. Alternatively, the real motive may have been to prepare the basis for a territorial defense. Perhaps the Soviet Government hoped for both benefits: to provide an essential pillar for territorial defense while reducing cost and effort. Russian commentators have indicated that the Soviet Government expected that the United States would discover the Krasnoyarsk construction quickly, but accept it as a minor technical violation. They were not prepared for the Reagan Administration's new, firm – and perhaps most important, sustained – opposition to noncompliance.

**3. *Had the violator accepted the agreement willingly or under duress? Was acceptance of the agreement the result of a strategic decision or was it a tactical expedient?***

The Soviet Government accepted the ABM Treaty willingly, but appears to have done so both as the result of a strategic decision and as a tactical expedient. The Soviets may have agreed to ABM negotiations out of concern at the potential impact on their strategic deterrent of the U.S. Safeguard BMD system. On March 14, 1969, President Nixon announced a decision to pursue Safeguard deployment at 12 sites throughout the continental United States. On August 6, 1969, an effort to deny Safeguard funding narrowly failed in the Senate – with the Vice President casting the deciding vote.<sup>121</sup> The SALT negotiations began three months later.

William Odom's unparalleled assessment of Soviet decision making presented in *The Collapse of the Soviet Military* includes an examination of Soviet arms control decisions, and is based on access to senior Soviet decision makers and documents of the time. Odom's conclusions regarding Soviet views of the ABM Treaty are instructive, and reveal how the striking divide between Western concepts of deterrence "stability" and those of the Soviet Union shaped Soviet

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<sup>121</sup> Baucom, op. cit., pp. 64-78, and "Senate by Narrow Votes Rejects Attempts to Cut Back Funds for Administration's Safeguard ABM Proposal," CQ Senate Votes 53 through 56, CQ [Congressional Quarterly] *Almanac*—13-S.



arms control behavior. The Soviet Union decided against nation-wide ABM deployment and enthusiastically embraced the ABM Treaty because:

First, their own technology was not yet adequate; second, it would draw resources away from and disrupt ICBM programs, which were proceeding smoothly. The U.S. proposal for an ABM Treaty therefore, came as a pleasant surprise. By ending the U.S. ABM program, it would free the Soviets from engaging in a simultaneous competition in both strategic offensive and defensive systems and permit Soviet ICBM programs to move ahead on schedule. Thus the ABM Treaty appeared to have allowed a considerably larger number of offensive nuclear weapons in the Soviet arsenal than there would have been without it. According to [Col General Nikolai] Detinov, the logic of U.S. views on...how to achieve strategic “stability” played no role at all in the Soviet acceptance of the ABM Treaty.

...their interest in the ABM Treaty arose from their concern with catching up and overtaking the U.S. arsenal of strategic offensive systems, not from an understanding of the U.S. view that outlawing ABMs would promote strategic stability. They wanted to avoid a simultaneous race in both ICBMs and ABMs because such a competition would slow down their own ICBM production.<sup>122</sup>

While the Soviet Union accepted the ABM Treaty willingly, it did so only after achieving much more flexibility on LPAR construction than the United States had sought. Thus, the Treaty did not constrain LPARs other than for early warning and ABM – opening the way to the Soviet false claim that the Krasnoyarsk installation was for space track. Further, the United States did not win the right even to advance notification of any new LPAR plans, reducing its ability to detect illegal construction.

**4. *Were there aspects of the agreement that increased the likelihood of violations? Were there deficiencies in verification capabilities that the violator was able to exploit?***

The ABM Treaty and the Interim Agreement simply allowed the parties to use national technical means of verification (NTM) – which they would have done anyway – and prohibited interference or concealment measures other than those normally used.<sup>123</sup> The two agreements also provided for the first time an implementation commission, the SCC. Its writ included:

- (a) consider questions concerning compliance with the obligations assumed and related situations which may be considered ambiguous;
- (b) provide on a voluntary basis such information as either Party considers necessary to assure confidence in compliance with the obligations assumed;
- (c) consider questions involving unintended interference with national technical means of verification.<sup>124</sup>

The addition of on-site verification measures to the Treaty would not have helped the United States to discover the Krasnoyarsk radar earlier; only NTM could do that. Suspect-site provisions

<sup>122</sup> Odom, *The Collapse of the Soviet Military*, op cit., pp. 71, 85.

<sup>123</sup> ABM Treaty Article XII.

<sup>124</sup> ABM Treaty, Article XIII.

might have enabled the United States to visit the radar once it was discovered. Judging by the August 1987 Congressional delegation trip to the site, however, such visits would do little to resolve any questions about, or U.S.-Soviet differences over, the radar. On-site visits would have helped to judge internal progress on conversion of the radar after the United States agreed it could be converted to a furniture factory rather than completely dismantled.

The absence of any verification measures other than NTM almost certainly did not increase the likelihood of the Krasnoyarsk violation. As discussed above, the Soviets expected that the United States would discover the radar soon after construction start. The lack of additional measures had little if any effect on the Soviet ability to conceal the violation.

**5. *Were the proscribed capabilities easy or hard to conceal? Could they be clandestinely obtained from third parties?***

Given the size of the Krasnoyarsk radar and its orientation, it was virtually impossible to conceal it as an illegal early warning radar. The failure of the United States to find the radar can be attributed only to the United States, not to the Soviet Union, with one possible exception. If the decision to locate the radar at Krasnoyarsk was motivated solely by construction considerations, the Soviets might have informed the United States in the SCC. However, such transparency would have been most unlikely in the pre-Gorbachev era.

**6. *When detected, was the violation blatant or plausibly ambiguous? Were its consequences seen as serious or relatively unimportant?***

The violation was blatant and generally recognized as such by the U.S. Executive Branch, although there was internal U.S. debate about its significance for some time. The radar would have been legal if the Soviet claim was correct that the Krasnoyarsk radar was for space track. However, several of its characteristics showed that claim to be false:

A dedicated space-tracking radar, unlike the Krasnoyarsk LPAR, would have a face angled upward, not toward the horizon. Nor would it need a face as large as that of the Krasnoyarsk radar. Indeed, the Soviet Union, like the United States, has space-tracking radars of smaller size with gimballed dishes that allow these radars to follow objects in space as they move directly overhead. The Krasnoyarsk LPAR has no vertical coverage of space. ... The orientation of the radar, as well as its design, is poorly suited for space-tracking missions.<sup>125</sup>

As discussed above, even critics of the Reagan Administration policy on Krasnoyarsk agreed that the radar was not for space track, but many argued that it did not have a battle management purpose and role and/or that it would violate the Treaty only if and when it began operating.

The position of many observers outside the U.S. Executive Branch on those two issues helped to determine how seriously they viewed the Krasnoyarsk violation. Those who argued that the radar was not for battle management or would not violate the Treaty until operating tended to view it as less important than those who took the opposite view.<sup>126</sup> The U.S. Executive Branch was firm

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<sup>125</sup> Lord and Barnett, op. cit., pp. 244-245.

<sup>126</sup> See for example, Carr, op. cit., and Garthoff, op. cit.

that the radar was a violation at the start of construction. Further, although the Administration never explicitly charged that Krasnoyarsk had a battle management role, that was implicit in the finding that it would be a pillar of the basis for a territorial defense that the Soviets “may” have been pursuing. U.S. Government agencies differed on the extent to which they favored pursuing the territorial defense charge, but there is no evidence that they disagreed on the substance.<sup>127</sup> They did, however, differ on whether to declare the Soviets in material breach of the ABM Treaty.<sup>128</sup>

Finally, views of the seriousness of the Krasnoyarsk violation varied according to whether it was seen as part of a pattern of Soviet arms control noncompliance. Some observers agreed that the radar was a violation, but argued that it was not part of a coherent Soviet noncompliance policy or pattern.<sup>129</sup> In contrast, the Reagan Administration consistently found a pattern of Soviet noncompliance, and asserted that there could be no insignificant arms control violations:

The Administration’s most recent studies support its conclusion that there is a pattern of Soviet noncompliance. ...

In a fundamental sense, all deliberate Soviet violations are equally important. As violations of legal obligations or political commitments, they cause grave concern regarding Soviet commitment to arms control, and they darken the atmosphere in which current negotiations are being conducted in Geneva.

In another sense, Soviet violations are not of equal importance. While some individual violations are of little apparent military significance in their own right, such violations can acquire importance if, left unaddressed, they are permitted to become precedents for future, more threatening violations. Moreover, some issues that individually have little military significance could conceivably become significant when taken in their aggregate.<sup>130</sup>

**7. Was the response to the violation undertaken by one or multiple parties? Were there differences within the government, or within and among the governments, responding to the violation? Were there differing assessments of the violation and possible responses? If so, what were the effects of these differences? If the response was unilateral in nature, was this a source of strength or weakness? If a number of states were involved, what were the advantages or disadvantages of a multilateral response?**

Although the ABM Treaty was bilateral, the United States actively sought allied support in condemning the Krasnoyarsk radar and other Soviet ABM violations. In general, that effort had

<sup>127</sup> See “Decisions Regarding Instructions for the SCC,” *op. cit.*

<sup>128</sup> R. Jeffrey Smith, “Reagan Rejects Carlucci Move to Renege on ABM Treaty,” *Washington Post*, August 9, 1988. Article 60 of the Vienna Convention on the Law of Treaties defines a material breach of a treaty as: “(a) a repudiation of the treaty not sanctioned by the present Convention; or (b) the violation of a provision essential to the accomplishment of the object or purpose of the Treaty.” Under the same article, a material breach of a bilateral treaty entitles the other party to terminate or suspend the treaty “in whole or in part.” *Vienna Convention on the law of treaties (with annex), Concluded at Vienna on 23 May 1969*, at <http://treaties.un.org>.

<sup>129</sup> See, for example, Gloria Duffy, “The Sources of Soviet Compliance Behavior,” in Michael Krepon and Mary Umberger, ed., *Verification and Compliance: A Problem-Solving Approach* (London: Macmillan Press, 1988), pp. 141-163.

<sup>130</sup> The White House, Office of the Secretary, *The President’s Unclassified Report on Soviet Noncompliance with Arms Control Agreements*, December 23, 1985, *op. cit.*, pp. 2-3.

little success.<sup>131</sup> However, the lack of allied support had little impact on the final outcome of the Krasnoyarsk issue.

As discussed above, the main announced U.S. response to Soviet noncompliance was the end to the interim restraint policy – a step advocated by the Defense Department and ACDA, but opposed by the State Department. In addition, those agencies differed on how much to emphasize the territorial defense issue, although there is no evidence that they differed on the substance. Further, State and Defense were on opposite sides during the consideration of whether to declare the Krasnoyarsk radar as a material breach of the Treaty. The final White House responses tended to be compromises between State and Defense.

**8. What types of responses to the violation were considered or adopted? Inaction? Accommodation? Negotiation or a revised or new agreement? Diplomatic pressure? Retaliatory breach of another arms control constraint? Economic sanctions? Military improvements, threats, or action? How effective were those that were pursued?**

The main diplomatic responses were as follows:

- The United States continuously raised the Krasnoyarsk radar in SCC meetings, and it was a central topic at the ABM Treaty Review. However, those working level discussions were largely *pro forma*, with no discernible impact on the outcome. The Soviet participants had no authority to diverge from official policy, and the U.S. participants had neither authority nor interest in diverging from U.S. policy.
- The interagency dispute over whether to declare the Soviet Union in material breach of the ABM Treaty came to a head during the final preparations for the quinquennial Treaty Review Conference in August 1988. The Office of the Secretary of Defense strongly favored doing so, hoping to lay the groundwork for a possible subsequent immediate termination of the Treaty. State Department just as strongly opposed that step. In the end, the Administration never declared the Soviet Union to be in material breach of the ABM Treaty. The closest it came was to state that the “violation caused by the Krasnoyarsk radar will continue to raise the issues of material breach and proportionate responses until it is resolved.”<sup>132</sup>
- The Reagan Administration initially linked the completion of new arms control agreements to resolution of compliance concerns. Over time, however, it took a very elastic approach to that policy, stretching it when convenient. By 1990, there was no linkage left, unless one includes a meaningless one between Soviet compliance and completion of a Defense and Space Treaty – an agreement whose conclusion was extremely improbable, even over the long term.

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<sup>131</sup> See Yost, *op. cit.*

<sup>132</sup> “Letter from the President to the Speaker of the House of Representatives and to the President of the Senate transmitting the President’s report, in classified and unclassified versions, on Soviet Noncompliance with Arms Control Agreements as required by PL 99-145, December 2, 1988,” available at [www.presidency.ucsb.edu](http://www.presidency.ucsb.edu).

- The most effective U.S. response to the Krasnoyarsk violation probably was the constant and consistent diplomatic pressure at the highest levels.<sup>133</sup>

The military responses were as follows:

- While no military responses were specifically tailored to the Krasnoyarsk violation, President Reagan in May 1986 announced responses to Soviet arms control violations in general.
- The responses considered at senior levels immediately before the President's announcement included: maintenance of the strategic modernization and SDI programs; abandonment of interim restraint (with various sub-options on the resultant strategic force actions and a new interim framework proposal); advances on maneuverable reentry vehicles (MARVs) and penetration aids.<sup>134</sup> There is no evidence of any consideration of economic sanctions.
- The President publicly announced the following responses: continuation of the strategic modernization and SDI programs; acceleration of the Advanced Cruise Missile program; direction to the Department of Defense to develop options for a comprehensive ICBM program beyond Peacekeeper; and abandonment of the interim restraint policy.<sup>135</sup>

**9. If the response involved inducements as well as penalties, is there evidence suggesting that the combination was more effective than either alternative alone?**

The U.S. response in the Krasnoyarsk case lacked either specific inducements or penalties. The abandonment of interim restraint was only loosely linked to the radar violation. What may have been most important in leading to the final outcome, were the more general inducements involved in the promise of a more productive relationship with the West if the issue was resolved. Quite outside of U.S. actions, another very significant factor may have been that the Gorbachev Government saw considerable benefit in gaining greater control over the Soviet military. Within a few years of Gorbachev's accession to power, it was becoming quite clear that he believed that his hoped-for restructuring of the Soviet economy was not possible without a fundamental change in military policy.<sup>136</sup>

**10. What tools and tactics were available to the violator to inhibit, fend off, or withstand a response? Which were chosen and why? What was their effectiveness?**

The Soviet leaders chose a series of proposals to resolve the Krasnoyarsk issue. At first, they simply declared the radar to be a legal space-track LPAR. Then, they chose a series of fallbacks.

<sup>133</sup> Press reports at the time claimed that various suggestions were made during 1987 within the State Department and in interagency discussions for resolutions to the Krasnoyarsk issue short of dismantlement. Lord and Barnett, *op. cit.*, pp. 277-278. No suggestions of that sort ever rose above the working level.

<sup>134</sup> The White House, *Minutes of the National Security Planning Group Meeting on RSVP Options*, *op. cit.*

<sup>135</sup> Ronald Reagan, *Statement on Soviet and United States Compliance with Arms Control Agreements*, May 27, 1986, available at <http://www.presidency.ucsb.edu>.

<sup>136</sup> See for example F. Stephen Larrabee, "Gorbachev and the Soviet Military," *Foreign Affairs*, Vol. 66, No. 5 (Summer 1988), pp. 1002-1026, and Alexander R. Alexiev and Robert C. Nurick, *The Soviet Military under Gorbachev: Report on a RAND Workshop* (Santa Monica, CA: The Rand Corporation, February 1990).

The November 1987 joint memorandum by the leaders of the “power ministries” and leading Central Committee departments is particularly illuminating in this regard:

They [the United States] reject the explanations and proposals offered by the Soviet side in an attempt to settle the controversy with the Krasnoyarsk radar and they assert that ‘nothing short of its dismantling will solve the problem of its unlawful deployment.’

However, a new large radar with a phased array has been put on combat duty by the U.S. outside its territory, in Thule (Greenland). Besides, the U.S. has begun the construction of similar radar in Fylingdales.....

The USSR has come out on numerous occasions and at different levels to settle the problem of radars on a mutually acceptable basis (mothballing the Soviet radar in Krasnoyarsk and American radars in Thule and Fylingdales. Mutual claims in relation to these radars to be dropped).

In particular, to drop the issue of the Krasnoyarsk radar, we could declare our readiness to observe for more than a year a moratorium on all kinds of work there if similar measures are taken in relation to the U.S. radars in Great Britain and the American side agrees to conduct talks on their radars.

As a measure of last resort, we could also look into the following variant: to inform the American side that on condition we agree the U.S. and the USSR do not use their right to withdraw from the ABM Treaty for 10 years, we would be prepared to dismantle the equipment of the Krasnoyarsk radar.<sup>137</sup>

Finally, in Autumn 1989, the Soviet Government ran out of fallback positions.

**11. *Were there important asymmetries in the stakes and resolve between the violator and enforcer(s) that had a significant influence on the outcome of the case?***

For most of the period of this case study, the stakes and resolve demonstrated by the U.S. and Soviet Governments in regard to the Krasnoyarsk violation were strikingly similar – not in substance, of course, but in degree. The Soviets were determined to retain the radar, and the United States to see it dismantled. In the end, U.S. resolve proved longer-lasting than that of the Soviet Union.

**12. *On the whole, why did deterrence of the violation fail? Why did efforts to restore compliance succeed or fail?***

It appears that deterrence of the violation failed because the Soviet Government did not expect a strong U.S. response to the Krasnoyarsk radar after it was discovered – a discovery that the Soviets thought was inevitable.

The effort to restore compliance probably succeeded for two main reasons. The most important was the firmness with which the United States held, year after year, to its position that the radar

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<sup>137</sup> “Considerations on Issues Relating to ‘Violations’ of the ABM Treaty: On the Krasnoyarsk Radar,” op. cit., pp. 1-2.

must be dismantled. Only after the fall of the Soviet Union did the United States change its position that the receiver and transmitter buildings must be demolished to their foundations, and accept conversion plans that included retention of 30-40 percent of the original buildings.<sup>138</sup> Nevertheless, that compromise effectively ended the Krasnoyarsk radar.

The second major reason was the coming to power of Mikhail Gorbachev. His three predecessors – Leonid Brezhnev, Yuri Andropov and Konstantin Chernenko – did not put a high priority on promoting good relations with the United States or in constraining the Soviet military. Gorbachev placed importance on both of those, as well as on the overall aims of *perestroika* and *glasnost*. Those novel features of the Gorbachev Government played a major role in the success of the U.S. effort to see an end to the Krasnoyarsk violation.

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<sup>138</sup> “Yeniseysk (Krasnoyarsk),” op. cit., p. 3.

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## Chapter Four: Iraq Case Study

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### ***Case Study Three: United States and Others versus the Iraqi Real and Apparent Violations of the United Nations Security Council Resolutions on WMD Disarmament, 1991-2003***

#### **Overview**

The Iraq/UN weapons of mass destruction (WMD) inspection and elimination case study can best be described as having three distinct phases.

The first phase took place in the immediate aftermath of the 1991 Gulf War to expel Iraqi forces from Kuwait and lasted until late 1998 when Saddam succeeded in suspending all UNSCOM and IAEA inspections in Iraq. UNSCOM was responsible for inspecting and eliminating Iraq's chemical weapons, biological weapons, ballistic missiles (of at least 150-km range), and related capabilities; the IAEA did the same regarding nuclear weapons. Termination of inspections was caused by a combination of factors: resistance by the Iraqi regime; inspection fatigue among UN members that had spearheaded the inspection and disarmament process; and distraction of leaders in the United States who were more focused on the ongoing military conflict in Kosovo and impeachment proceedings against President Clinton. This period from 1991 to 1998 is the primary focus of this investigation as it is the phase most relevant to the arms control issues pertinent to this study.

The failure of the first phase to accomplish the UN-established goals of verifying WMD elimination with high confidence and the lifting of economic sanctions on a certified WMD-free Iraq led to a second phase. This lasted from late 1998 to 2001, was characterized by the widespread belief of most western intelligence agencies that Iraq had not eliminated all of its WMD, and involved military strikes by the United States and Great Britain to punish Iraq for its intransigence. It also involved the creation of UNMOVIC, a new verification commission to replace UNSCOM.

Finally, in the wake of the terrorist attacks on September 11, 2001, a third phase of this case study was played out. Concern over the potential for Iraq to transfer WMD to terrorist organizations or to use WMD against U.S. allies, combined with President George W. Bush's determination that Iraq comply with its UNSC obligations, led to his decision to invade Iraq. It was only in the aftermath of the 2003 invasion, occupation, and search for WMD that U.S. and other intelligence agencies discovered that most undeclared Iraqi WMD had, in fact, probably been destroyed early after the Gulf War.

In 1990, in response to Iraq's aggression against its neighbor Kuwait, the United States, aided primarily by Great Britain, built a coalition of countries that drafted and approved a series of resolutions in the United Nations and formed a multinational military force to evict Iraqi forces from occupied Kuwait. In November 1990, a UNSC resolution established a deadline of 15 January 1991 for Iraq to withdraw from Kuwait and authorized "all necessary means" to achieve



that outcome and restore peace and security, if the UN demands on Iraq were not met.<sup>139</sup> When Iraq failed to comply, coalition military forces launched Operation Desert Storm in early 1991. This successful military operation forced Iraq to withdraw from Kuwait and decimated Iraqi military forces. Coalition forces pushed Iraqi forces from Kuwait, but stopped well short of Baghdad and declared a *de facto* ceasefire. It should be noted that an important part of the Desert Storm air campaign was the goal of destroying Iraqi WMD and ballistic missile capabilities. The fact that the air campaign failed to eliminate these capabilities made the UNSCOM and IAEA inspection and elimination activities necessary.<sup>140</sup>

Although Iraq was forced to withdraw from Kuwait and its military forces were soundly defeated, the regime headed by Saddam Hussein was allowed to remain in power. According to Charles Duelfer, UNSCOM Deputy Executive Chairman, an unspoken assumption among UNSC representatives was that Saddam's regime would soon collapse and a new government would be dealt with on new terms.<sup>141</sup>

For the next decade, from April 1991 to November 2002, the UNSC passed a series of resolutions that established Iraq's WMD disarmament and related obligations:

- The basic, most important of these resolutions was UNSCR 687, passed on 3 April 1991 and accepted by Iraq three days later. The resolution stated that "Iraq shall unconditionally accept the destruction, removal, or rendering harmless, under international supervision of all chemical and biological weapons and all stocks of agents and all related subsystems and components and all research, development, support and manufacturing facilities... all ballistic missiles with a range greater than one hundred and fifty kilometers and related major parts, and repair and production facilities." Further, it forbade Iraq to acquire or develop nuclear weapons, nuclear-weapons material or any related subsystems, components, research, development, support or manufacturing facilities. It called for Iraq to declare "the locations, amounts and types" of all prohibited items, to accept on-site inspection, and to turn all prohibited items over "for destruction, removal or rendering harmless." The resolution created UNSCOM to carry out inspections and address chemical and biological weapons, ballistic missiles, and related components, equipment and facilities. The IAEA was requested to do the same in the nuclear area. If and when Iraq accepted the resolution, a formal cease-fire would take effect.<sup>142</sup>
- UNSCR 707 in August 1991 condemned "Iraq's serious violation of a number of its obligations under...resolution 687 (1991) and of its undertakings to cooperate with the Special Commission and the International Atomic Energy Agency, which constitutes a material breach of the relevant portions of that resolution...." It required Iraq to provide "without further delay full, final and complete disclosure" of all aspects of its WMD and longer-range missile programs. The resolution also ordered Iraq to provide unrestricted

<sup>139</sup> United Nations Security Council, *Resolution 678 (1990) of 29 November 1990*, para. 2; available at [www.un.org](http://www.un.org).

<sup>140</sup> For a good discussion of Operation Desert Storm air operations against Iraqi WMD and missiles, see *Gulf War Air Power Survey*, Vol. II: Operations and Effects and Effectiveness, (Washington, DC: Government Publishing Office, 1993), pp. 312-340; available at [www.dtic.mil](http://www.dtic.mil).

<sup>141</sup> Charles Duelfer, *Hide and Seek: The Search for Truth in Iraq* (New York: Public Affairs, 2009), p. 74.

<sup>142</sup> United Nations Security Council, *Resolution 687 (1991) Adopted by the Security Council at its 2981<sup>st</sup> meeting on 3 April 1991*, S/RES/687 (1991), available at <http://un.org>, paras. 8-13.

access to UNSCOM and the IAEA, and to halt all nuclear activities except for medical, agricultural or industrial use of isotopes.<sup>143</sup>

- UNSCR 715 in October 1991 approved UNSCOM and IAEA long-term monitoring plans and demanded unconditional Iraqi compliance with those plans and the continuing obligations of UNSCR 687.<sup>144</sup>
- UNSCR 1051 in March 1996, approved a mechanism for UNSCOM and IAEA monitoring of Iraqi dual-use items.<sup>145</sup>
- UNSCR 1060 in June 1996, deplored Iraqi refusal to allow site access to UNSCOM, and demanded that it allow “inspection teams immediate, unconditional and unrestricted access to any and all areas, facilities, equipment, records and means of transportation which they wish to inspect.”<sup>146</sup>
- UNSCR 1284 in December 1999 – over a year after UNSCOM inspectors were withdrawn from Iraq – created UNMOVIC to replace UNSCOM. The resolution reaffirmed all previous WMD-related UNSCRs, “which establish the criteria for Iraqi compliance,” and made clear that all provisions regarding UNSCOM would apply to UNMOVIC, including “immediate, unconditional and unrestricted access.”<sup>147</sup> (Note: China, France, Malaysia and Russia all abstained, underscoring the weakening over time of international consensus to require Iraqi compliance.<sup>148</sup> Neither UNMOVIC nor the IAEA was able to enter Iraq for almost three years after the passage of this resolution.)
- Finally, in November 2002, the Security Council unanimously passed UNSCR 1441 – the last and the most emphatic of the WMD compliance resolutions. UNSCR 1441 found Iraq in “material breach of its obligations under relevant resolutions, including resolution 687 (1991), in particular through Iraq’s failure to cooperate with United Nations inspectors and the IAEA” and to complete its WMD and missile-related obligations. Giving Iraq “a final opportunity to comply with its disarmament obligations,” the resolution required Iraq to provide “a currently accurate, full, and complete declaration of all aspects of its [WMD and delivery vehicle] programmes” and to grant expanded access to UNMOVIC and IAEA inspectors. For emphasis, the resolution stated that it “is binding on Iraq,” although that was also true of all the previous Iraq WMD-related UNSCRs. Finally, the resolution

<sup>143</sup> United Nations Security Council, *Resolution 707 (1991) of 15 August 1991*, paras. 1 and 3, available at <http://www.un.org>.

<sup>144</sup> United Nations Security Council, *Resolution 715 (1991) Adopted by the Security Council at its 3012<sup>th</sup> meeting, on 11 October 1991*, S/RES/715 (1991), paras. 2-3 and 5, available at <http://www.un.org>.

<sup>145</sup> United Nations Security Council, *Resolution 1051 (1996) Adopted by the Security Council at its 3644<sup>th</sup> meeting, on 27 March 1996*, S/RES/1051 (1996), passim, available at <http://www.un.org>.

<sup>146</sup> United Nations Security Council, *Resolution 1060 (1996) Adopted by the Security Council at its 3672<sup>nd</sup> meeting on 12 June 1996*, S/RES/1060 (1996), paras. 1-2, available at <http://www.un.org>.

<sup>147</sup> United Nations Security Council, *Resolution 1284 (1999), Adopted by the Security Council at its 4084<sup>th</sup> meeting, on 17 December 1999*, S/RES/1284 (1999), paras. 1, 2, 4, available at <http://www.un.org>.

<sup>148</sup> United Nations, *Security Council Establishes New Monitoring Commission for Iraq Adopting Resolution 1284 (1999) by Vote of 11-0-4*, Press Release, SC/6775, December 17, 1999, pp. 1-2, available at <http://www.un.org>.

concluded “that the Council has repeatedly warned Iraq that it will face serious consequences as a result of its continued violation of its obligations.”<sup>149</sup>

Closely related were the Security Council sanctions provisions:

- UNSCR 661 in August 1990 imposed comprehensive economic and financial sanctions on Iraq, given its failure to withdraw from Kuwait.<sup>150</sup>
- UNSCR 687 in April 1991 affirmed that UNSCR 661 still applied.
- UNSCR 706 and 712, passed on 15 August and 19 September 1991 respectively, established provisions for limited sale and export of Iraqi-produced oil and use of the revenue produced for “humanitarian relief to all segments of the Iraqi civilian population.”<sup>151</sup>
- UNSCR 986, passed on April 14, 1995, established the Oil-for-Food Program which was intended to finance the purchase of food and humanitarian relief for the general population, provide reparations for damages during Iraq’s invasion and occupation of Kuwait, as well as other costs.<sup>152</sup> The Oil-for-Food Program was exploited blatantly by Iraq with the willing cooperation of some governments charged with enforcing UN resolutions.<sup>153</sup> Nevertheless, several subsequent Security Council resolutions, through December 1992, renewed and expanded the program.
- Finally, UNSCR 1483, passed in May 2003 after the second Gulf War, lifted civilian sanctions on Iraq and called for an end to the Oil-for-Food Program within six months.<sup>154</sup>

Of greatest concern to the United States and U.S. allies in the region was the potential threat posed by Iraq’s military capabilities, in particular its WMD and delivery systems. Iraq had previously demonstrated its WMD capabilities and willingness to employ WMD. According to Iraqi records, during its 1980 to 1988 war with Iran, Baghdad used 1,800 tons of mustard gas, 140 tons of the nerve agent Tabun, and 600 tons of sarin. In 1984 Iraq became the first country to employ a nerve agent (Tabun) in war. These chemical agents were delivered by means of approximately 19,500 bombs, 54,000 artillery shells, and 27,000 short-range rockets.<sup>155</sup> Iraq’s prolific employment of chemical weapons on its adversaries was a serious concern.

<sup>149</sup> United Nations Security Council, *Resolution 1441 (2002) Adopted by the Security Council at its 4644<sup>th</sup> meeting, on 8 November 1992*, S/RES/1441 (2002), paras. 1, 2, 3, 5, 7, 9 and 13, available at <http://www.un.org>.

<sup>150</sup> United Nations Security Council, *Resolution 661 (1990) of 6 August 1990*, available at <http://www.un.org>.

<sup>151</sup> United Nations Security Council, *Resolution 706 (1991) of 15 August 1991, and Resolution 712 (1991) of 19 September 1991*, available at <http://www.un.org>.

<sup>152</sup> United Nations Security Council, *Resolution 986 (1995) Adopted by the Security Council at its 3519<sup>th</sup> meeting, on 14 April 1995*, S/RES/986 (1995), available at <http://www.un.org>.

<sup>153</sup> Duelfer, *Hide and Seek: The Search for Truth in Iraq*, op. cit., p.165, 183-184.

<sup>154</sup> United Nations Office of the Iraq Program, *Oil-for-Food: About the Program*, available at <http://www.un.org>.

<sup>155</sup> Kevin M. Woods, David D. Palkki, Mark E. Stout, *The Saddam Tapes: The Inner Workings of a Tyrant’s Regime 1978-2001* (Cambridge: Cambridge University Press, 2011), pp. 220-221.

In 1991, during Operation Desert Storm, Iraq fired a total of 88 Scud missiles.<sup>156</sup> According to one accounting, 46 Scud missiles were fired at coalition forces and at the territory of coalition members. In addition, 42 Scud missiles were fired at Israel which was not a participant in the military conflict. None of the missiles carried chemical or biological warheads.<sup>157</sup>

As evidenced above, Saddam clearly demonstrated the threat posed by Iraq's WMD capabilities. UN objectives following the 1991 military conflict included the verifiable elimination of Iraqi WMD and longer-range delivery vehicle stocks, capabilities and infrastructure, and monitoring indefinitely of potential WMD-related facilities in Iraq to detect efforts to reconstitute WMD capabilities.

On paper, the UN resolutions accorded UNSCOM sweeping authority, allowing inspectors authority to go virtually anywhere, anytime, without notice; to take any samples and documents; to interview any individual; to bring into the country any material or device deemed necessary. As characterized by Charles Duelfer, "[t]hus began the most intrusive inspection regime backed by force since the Versailles Treaty imposed similar measures on Germany after World War I."<sup>158</sup> One significant problem was that no coalition military forces were retained in Iraq to enforce cease-fire agreements. Iraq had lost a major war, but instead of occupation by the victors, Iraq received UN inspectors and economic sanctions.<sup>159</sup>

After agreeing to the terms of the cease-fire resolution, which included providing a complete accounting of its WMD and weapons delivery programs, the secretive and authoritarian regime of Saddam Hussein tried to get by with incomplete accounting, deception, and impediments to UN inspections. On April 18, 1991, Iraq made its first formal declarations about its WMD programs as required by UNSCR 687. It declared that it had 53 Scud-type missiles, some chemical weapons, and no biological weapons or nuclear weapons program.<sup>160</sup> That initial WMD declaration—in particular, that Iraq had no biological or nuclear weapons programs—was a lie.

As UNSCOM inspections commenced, Iraq attempted to sanitize certain sites prior to inspections and to remove and hide many official records documenting its WMD programs. This behavior aroused suspicions among United States officials and UN inspectors that the Saddam Hussein regime was not fully cooperating and was hiding some of its WMD inventory.

Over time, the secretive, authoritarian regime of Saddam Hussein manipulated various UN participants in an attempt to gain some control over the inspection process and restore greater sovereignty over its territory, facilities, capabilities, and state secrets. Toward this goal, the Iraqis reportedly used bribes and economic incentives to buy the support of countries that had influence in the UNSC, most notably Russia and France.<sup>161</sup>

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<sup>156</sup> Department of Defense, *Final Report to Congress: Conduct of the Persian Gulf War*, April 1992, available at [www.ssi.army.mil](http://www.ssi.army.mil), p. 165.

<sup>157</sup> *Gulf War Air Power Survey*, Vol. II, *op. cit.*, p.337; Office of the Special Assistant for Gulf War Illnesses, *Iraq's Scud Ballistic Missiles*, Information Paper (Washington, DC: Department of Defense, February 12, 2001); available at [www.gulfink.osd.mil](http://www.gulfink.osd.mil).

<sup>158</sup> Charles A. Duelfer, "Hide and Seek," *New York Times*, June 23, 2009, available at <http://www.nytimes.com>.

<sup>159</sup> Duelfer, *Hide and Seek: The Search for Truth in Iraq*, *op. cit.*, pp. 169-170.

<sup>160</sup> *Ibid.*, p. 79.

<sup>161</sup> *Ibid.*, p. 170.

In November 1993, Iraqi Foreign Minister Tariq Aziz announced that Baghdad had accepted the UN demand for a permanent monitoring system to be installed in Iraq and operated by UNSCOM and the IAEA.<sup>162</sup> UNSCOM and the IAEA began designing and building monitoring systems for specific WMD capabilities—ballistic missiles, chemical weapons, biological weapons, and nuclear weapons. As UN inspectors traveled across Iraq to conduct a “baseline survey,” Iraq formed a counterpart organization to monitor the movement of the inspectors. The new organization was called the National Monitoring Directorate. According to Iraqi officials, the purpose of this group was to serve as an interface to facilitate the UN inspectors’ work. According to Duelfer, its real purpose was to keep tabs on the inspectors, obstruct any surprise inspections, and prevent inspectors from finding anything that Iraq did not want them to find. Duelfer referred to this Iraqi effort to gain control of the inspection process as “the great game.”<sup>163</sup>

Sanctions had crippled Iraq’s economy during the first half of the 1990s. The standard of living of the general population, which bore the brunt of the sanctions, was sent plunging.<sup>164</sup> By mid-1995, Iraq was beginning to press UNSCOM to report to the UNSC that its inspections and verification of Iraqi declarations had been satisfactorily completed. This, the Iraqis hoped, would lead the UNSC to consider lifting sanctions. In 1995, the UNSC acted to try to correct the unintended negative consequences of sanctions on the civilian population. In an effort to mitigate the damage, the Security Council adopted Resolution 986 setting up the Oil-for-Food Program. This program was intended to allow Iraq to sell a quantity of its oil and use the major portion of the revenues to purchase food and other humanitarian relief supplies for the civil population. A portion of the income from the Oil-for-Food Program was allocated to war reparations to those who suffered damages as a result of Iraq’s invasion and subsequent occupation of Kuwait, as well as to administrative costs of the UN weapons inspection program.<sup>165</sup>

In August 1995, an unexpected breakthrough occurred that affected both Iraqi cooperation and UN perceptions of Iraqi intentions. Hussein Kamel, the son-in-law of Saddam Hussein and the person responsible for Iraq’s military industry and WMD, fled Iraq and was granted asylum in Jordan. This action apparently shocked Saddam and his subordinates who believed that the purposeful misrepresentations of their WMD declarations would be revealed by Kamel.

Following Kamel’s defection, Iraqi officials quickly provided new information on WMD programs to UNSCOM and the IAEA, and blamed the earlier, evasive declarations on Kamel himself. These new revelations included documentation that Iraq had produced biological weapons and hoped to pursue a “crash program” to develop a nuclear weapon. This program involved diverting “fissionable material from research reactor fuel that was under IAEA safeguards.”<sup>166</sup>

This new information shocked the international community that had trusted that IAEA monitoring of declared nuclear activities was sufficient to prevent such diversions without detection. These revelations and new Iraq WMD declarations fueled suspicions among UN inspectors (and U.S. officials) over what else Iraq might be hiding.<sup>167</sup> Instead of taking steps to remove economic

<sup>162</sup> “Regime Strategy and WMD Timeline Events,” in *Comprehensive Report of the Special Advisor to the DCI*, op. cit.

<sup>163</sup> Duelfer, *Hide and Seek: The Search for Truth in Iraq*, op. cit., pp. 92-93.

<sup>164</sup> Hans Blix, *Disarming Iraq* (New York: Pantheon Books, 2004), pp. 35-36.

<sup>165</sup> United Nations Security Council, *Resolution 986*, loc. cit., para. 8(c) and (e).

<sup>166</sup> Blix, *Disarming Iraq*, op. cit., p. 30.

<sup>167</sup> Duelfer, *Hide and Seek: The Search for Truth in Iraq*, op. cit., pp. 107-110.

sanctions on Iraq, UNSCOM pursued inspections with renewed intensity to discover what else Iraq may be hiding.

Revelations from the Kamel defection reenergized inspection activities, dampened Iraqi enthusiasm to cooperate with UNSCOM, and dimmed the Iraqis' hope of having sanctions on Iraq lifted. In October 1997, a protracted confrontation between Saddam and the United States was triggered by Iraqi accusations that U.S. members of UNSCOM inspection teams were intelligence operatives. Iraq then expelled the majority of U.S. participants. The UN withdrew all inspectors in protest and the United States and Great Britain once again began a military buildup in the Gulf. (This buildup was in preparation for Operation Desert Fox.)<sup>168</sup> Inspections were suspended until February 1998, when UN Secretary-General Kofi Annan negotiated an agreement with Iraq and promised Iraq that the UN would consider lifting sanctions once inspections were completed. However, in October 1998, Iraq again refused to allow inspections to be conducted. On November 11, 1998, most UNSCOM and IAEA inspectors left Iraq, but returned on the 17<sup>th</sup> after Iraq "decided, clearly and unconditionally, to cooperate fully with" them.<sup>169</sup>

On 15 December 1998, the heads of UNSCOM and the IAEA reported to the Secretary General on their experience in Iraq over the previous month. The IAEA report was positive, saying that it had received "the necessary level of cooperation to enable [inspections, visits, interviews and technical discussions] to be completed efficiently and effectively."<sup>170</sup> The UNSCOM letter was very different, reporting that during the previous month Iraq had initiated "new forms of restrictions" on the Commission's work" and "ensured that no progress was able to be made in either the fields of disarmament or accounting for its prohibited weapons programs."<sup>171</sup> That night, inspectors began evacuating Iraq.<sup>172</sup> The next day, the United States and Great Britain launched Operation Desert Fox—a 70-hour air campaign against key targets in Iraq, including what were identified as WMD- and missile-related facilities.<sup>173</sup> President William Clinton addressed the country to discuss his rationale for this action. Clinton stated, "The international community gave Saddam one last chance to resume cooperation with the weapons inspectors. ... Saddam has failed to seize the chance. So we had to act now."<sup>174</sup> According to a fact sheet by the Air Force Historical Support Division, "Operation Desert Fox inflicted serious damage to Iraq's missile development program, although its effects on any WMD program were not clear."<sup>175</sup>

As the relationship between UN inspectors and Iraq continued to deteriorate, two unrelated events distracted U.S. policymakers and demanded the close attention of the White House—the Clinton impeachment process and the UN conflict in Kosovo. First, the launching of Operation Desert Fox occurred during a time when the U.S. House of Representatives was considering articles of

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<sup>168</sup> U.S. Department of Defense, *Fact Sheet on Operation Desert Fox*, available at [http://archive.defense.gov/specials/desert\\_fox/](http://archive.defense.gov/specials/desert_fox/).

<sup>169</sup> "Annex II: Letter dated 15 December 1998 from the Executive Chairman of the Special Commission established by the Secretary-General pursuant to paragraph 9(b)(i) of Security Council resolution 687 (1991) addressed to the Secretary General," in *Letter Dated 15 December 1998 from the Secretary General Addressed to the President of the Security Council*, p. 3, S/1998/1172, available at <http://www.un.org>.

<sup>170</sup> "Annex I: Letter dated 14 December 1998 from the Director General of the International Atomic Energy Agency addressed to the Secretary-General," in *Letter Dated 15 December 1998*, op. cit., p. 2.

<sup>171</sup> "Annex II", op. cit., p. 7.

<sup>172</sup> Duelfer, *Hide and Seek: The Search for Truth in Iraq*, op. cit., pp. 157-158.

<sup>173</sup> Department of Defense, *Operation Desert Fox*, op. cit.

<sup>174</sup> Linda Kozam, "Saddam Abused His Last Chance, Clinton Says," American Forces Press Service, December 17, 1998. <http://archive.defense.gov>.

<sup>175</sup> Captain Gregory Ball, USAFR, "1998 – Operation Desert Fox," August 23, 2011; available at [www.afhistory.af.mil](http://www.afhistory.af.mil).

impeachment against President Clinton. On December 20, 1998, the House approved two articles of impeachment. As some observers have noted, Clinton may have launched this military operation to distract attention from his reported indiscretions. Domestic politics in the United States may have played a crucial role during a critical period in Iraqi-UNSCOM engagement.<sup>176</sup> Second, to support its activities in Kosovo, the United States needed the cooperation of both France and Russia. With “Iraq fatigue” setting in, the Kosovo contingency was afforded priority over WMD compliance inspections in Iraq.<sup>177</sup>

In January 1999, the UNSCOM Executive Chairman reported to the UNSC President on the state of affairs on Iraq’s biological and chemical weapons and longer-range missiles. He reported substantial achievements, but many important outstanding issues.<sup>178</sup> Below is a brief summary:

- Biological
  - UNSCOM destroyed 22 metric tons of BW growth media, supervised destruction of the leading BW production facility and destroyed equipment from three other sites.
  - However, it could not confirm how many biological weapons Iraq had produced, whether all bulk agents had been destroyed, whether any BW munitions or weapons remained in Iraq, or whether BW capability did not still exist in Iraq.<sup>179</sup>
- Chemical
  - UNSCOM destroyed over 38,000 chemical munitions, filled and unfilled, and oversaw destruction of almost 700 tons of agent, over 3000 tons of precursors and around 600 equipment items.
  - UNSCOM certified, but not with high confidence, that around 50,000 munitions and 1000 tons of precursors had been destroyed during the Gulf War or unilaterally by Iraq.
  - It also oversaw the dismantlement of the most important CW facility and monitored other sites.
  - Priority remaining issues included: VX production accounting; CW munitions expenditure and unilateral destruction; and production equipment removed from the main chemical weapons complex before UNSCOM inspected it.<sup>180</sup>
- Missiles
  - UNSCOM oversaw destruction of 817 (out of 819) SCUDs, and either destroyed or verified destruction of all 15 declared mobile missile launchers and 56 launch sites.

<sup>176</sup> Duelfer, *Hide and Seek: The Search for Truth in Iraq*, op. cit., p. 156.

<sup>177</sup> *Ibid.*, p. 171.

<sup>178</sup> “Annex: Letter dated 25 January 1999 from the Executive Chairman of the Special Commission established by the Secretary-General pursuant to paragraph 9(b)(i) of Security Council resolution 687 (1991) addressed to the President of the Security Council,” in *Letter Dated 27 January 1999 from the Permanent Representatives of the Netherlands and Slovenia to the United Nations Addressed to the President of the Security Council, S/1999/94*, 29 January 1994, available at <http://www.un.org>. For brief summaries of the chemical, biological, missile and nuclear findings, see Arms Control Association, “Iraq: A Chronology of UN Inspections,” *Arms Control Today*, October 1, 2002, available at <https://www.armscontrol.org>, and *Report of the First Panel Established Pursuant to the Note by the President of the Security Council on 30 January 1999 (S/1999/100) Concerning Disarmament and Current and Future Ongoing Monitoring and Verification Issues* [commonly known as “Amorim Report”], S/1999/356, March 27, 1999, available at <http://www.un.org>.

<sup>179</sup> “Appendix III: Status of Verification of Iraq’s Biological Weapons Programme,” in “Annex: Letter dated 25 January,” op. cit., pp. 164-167.

<sup>180</sup> “Appendix II: Status of the Verification of Iraq’s Chemical Weapons Programme,” *ibid.*, p. 80.

- UNSCOM oversaw destruction of 50 missile warheads (including 30 chemical warheads), 20 tons of missile fuel and 50 tons of oxidizer, and destroyed various facilities designed to produce indigenous missiles.
- Priority issues remained on missile warheads, propellant and indigenous missile production.<sup>181</sup>
- Two weeks later, a much more positive report from the IAEA Director General on nuclear issues stated that:
  - The IAEA had developed a “technically coherent picture” of Iraq’s nuclear activities, from natural uranium production and procurement, through enrichment, to design and experiments for eventual weaponization.
  - All weapons-usable nuclear material, including the research reactor fuel which Iraq had hoped to use in its “crash program” had been removed from Iraq.
  - Iraq had aimed at a small number of nuclear weapons, but “there were no indications that Iraq had achieved its programme objectives, or produced or otherwise acquired any meaningful amounts of weapon-usable nuclear material.”
  - There were no indications that Iraq still had facilities or hardware to produce weapons-usable material, although the Agency could not say definitely that they did not exist.<sup>182</sup>

Although UNMOVIC was created by the UNSC in December 1999, it and the IAEA were not allowed back into Iraq until November 17, 2002 – a few weeks after the passage of UNSCR 1441 (described above). Saddam Hussein undoubtedly hoped that a new show of cooperation would stave off the feared invasion. In January 2003, UNMOVIC Executive Chairman Hans Blix briefed the UNSC that Iraq had provided yet another “full, final and complete declaration” – this one approximately 12,000 pages long. The inspectors had found some previously undeclared chemical rockets, and had major unanswered questions about Iraqi work on VX, unaccounted chemical bombs, anthrax production and stockpiling, and development of two new missiles tested beyond 150 km.<sup>183</sup> Two weeks later, IAEA Director General Mohammed El Baradei provided a counterpart report to the UNSC. Again, the nuclear picture was more positive: “the IAEA concluded, by December 1998, that it had neutralized Iraq’s past nuclear programme and that, therefore, there were no unresolved disarmament issues left at that time.... We have to date found no evidence of ongoing prohibited nuclear or nuclear related activities in Iraq.”<sup>184</sup>

On March 18, 2003, all UNMOVIC and IAEA inspectors left Iraq. Two days later, United States and coalition forces launched military action—Operation Iraqi Freedom—against Iraq.

In the wake of the terrorist attacks on 9/11, the potential for Iraq to transfer WMD to terrorist organizations or to use WMD on U.S. allies led to the decision by U.S. President George W. Bush to authorize Operation Iraqi Freedom. It was only in the aftermath of the 2003 invasion and search

<sup>181</sup> “Letter dated 25 January 1999, op. cit., pp. 7-8, and “Appendix I: Status of the Material Balances in the Missile Area,” *ibid.*, pp. 11-54.

<sup>182</sup> “Report of the Director General of the International Atomic Energy Agency in connection with the panel on disarmament and current and future ongoing monitoring and verification issues (S/1999/100), in *Letter Dated 8 February 1999 from the Secretary-General Addressed to the President of the Security Council*, S/1999/127, February 9, 1999, pp. 1-16, available at <http://www.un.org>.

<sup>183</sup> *The Security Council, 27 January 2003: An Update on Inspection, Executive Chairman of UNMOVIC, Dr. Hans Blix*, as delivered, available at <http://www.un.org>.

<sup>184</sup> “Mohamed El Baradei’s report to the UN security council,” *The Guardian*, February 14, 2003, available at <https://www.theguardian.com>.



for WMD that the intelligence agencies of the United States and other countries discovered that virtually all Iraqi WMD and prohibited missile capabilities had, in fact, already been destroyed – including those described by UNMOVIC as outstanding issues just a month earlier.<sup>185</sup>

However, the ISG, in its 2004 report, also found that Saddam Hussein planned to resurrect Iraq's WMD and longer-range missile capability after sanctions were lifted: "Saddam wanted to recreate Iraq's WMD capability—which was essentially destroyed in 1991 – after sanctions were removed and Iraq's economy stabilized, but probably with a different mix of capabilities to that which previously existed. Saddam aspired to develop a nuclear capability – in an incremental fashion, irrespective of international pressure and the resulting economic risks – but he intended to focus on ballistic missiles and tactical chemical warfare (CW) capabilities."<sup>186</sup> Still, the ISG also found that "the state intended to preserve its BW capability and return to a BW capability when and if the opportunity arose."<sup>187</sup>

## Summary

In sum, this case study began with a defeated adversary, Iraq, which had agreed to a UN cease-fire resolution calling for UN inspections, verified elimination of all its WMD capabilities, and establishment of UN WMD monitoring capabilities at key locations. According to senior participants, this inspection regime was one of the most intrusive in the history of arms control. UN monitoring of key sites was to continue indefinitely. About a dozen years later, the United States invaded Iraq over the potential threat posed by WMD in that country. No caches of Iraqi WMD were found by U.S. forces which had been equipped to seize, secure, and neutralize WMD agents. Nevertheless, Iraq clearly and repeatedly violated successive UN Security Resolutions, including by its false declarations, unilateral destruction of prohibited items without inspectors' supervision, and obstruction of inspection teams.

Why did Saddam Hussein go to such lengths to create strong suspicions in the international community that he retained chemical and biological weapons, longer-range missiles, and associated capabilities – thus violating UN Security Council transparency obligations, and inviting the military action that he wanted to avoid? The questions and answers that follow may help to understand the dynamics at work in this case study.

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<sup>185</sup> The ISG's Key Findings included the following statements: "Saddam Husayn ended the nuclear program in 1991 following the Gulf War;" "Iraq unilaterally destroyed its undeclared chemical weapons stockpile in 1991;" and "Iraq appears to have destroyed its undeclared stocks of BW weapons and probably destroyed remaining holdings of bulk BW agents. However, ISG lacks evidence to document complete destruction. Iraq retained some BW-related seed stocks." "Key Findings: Nuclear, Chemical, Biological," in *Comprehensive Report of the Special Advisor to the DCI on Iraq's War*, September 30, 2004, available at <https://www.cia.gov>.

<sup>186</sup> "Key Findings: Regime Strategic Intent," in *Comprehensive Report of the Special Advisor to the DCI on Iraq's WMD*, op. cit.

<sup>187</sup> "Key Findings: Biological," in *Comprehensive Report of the Special Advisor to the DCI on Iraq's WMD*, op. cit.

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## Questions

1. ***Did the character of the government committing the violation incline it toward breaching the agreement? (For example, authoritarian regimes – unaccountable, secretive, deceptive, byzantine, aggressive – may be prone to noncompliance).***

Saddam Hussein's regime was tailor-made for noncompliance. First, was Saddam's absolute dominance, and his goals that conflicted with the long-term disarmament goals of Security Council resolutions. "Saddam Husayn so dominated the Iraqi Regime that its strategic intent was his alone. He wanted to end sanctions while preserving the capability to reconstitute his weapons of mass destruction (WMD) when sanctions were lifted. ... He sought to balance the need to cooperate with UN inspections – to gain support for lifting sanctions – with his intention to preserve Iraq's intellectual capital for WMD with a minimum of foreign intrusiveness and loss of face."<sup>188</sup>

The authoritarian nature of the regime lent itself to the tight compartmentalization of information about Iraqi WMD programs and capabilities. Saddam was at the center of access to this information. This facilitated his deception of not only those he considered adversaries, but also his closest subordinates.<sup>189</sup>

Further, the closed nature of this regime was not consistent with the cooperative approach to UN inspections in Iraq called for in relevant UNSC resolutions. Many high-ranking Iraqi officials were ordered to give the appearance of not obstructing the UN and tried to pave the way for smooth inspections. Nevertheless, the heavy-handed actions of senior Iraqi officials in directing subordinates in the preparation of sites to be inspected appeared suspicious to UN inspectors and Western intelligence agencies. Further fueling suspicions was the fact that Saddam used security service and military units, accountable only to him, to impede inspections and carry out deception measures.<sup>190</sup> According to a CIA assessment, "[t]he Iraqi regime had an extreme distrust of outsiders combined with a fanatical devotion to security that in many cases led to actions that sabotaged efforts to demonstrate that it wanted to cooperate." The intense focus on regime security and Iraqi efforts to present to its regional adversaries an aggressive image fueled suspicions that Iraq was unrepentant and could be dangerous. Apparently, this is the image that Saddam wanted to present to his regional adversaries.<sup>191</sup>

2. ***What did the violator hope to gain? What consequences did it anticipate? No response, with the violations undetected or unpunished? Penalties that would be acceptable in light of the expected gain?***

According to the 2004 ISG after-action assessment, Saddam had several objectives in accepting the terms of the 1991 cease-fire. First and foremost, he wanted to preserve and maintain the security of the regime and his legacy. Next, he wanted to have UN economic sanctions lifted and was willing to comply grudgingly with UN demands if necessary for that to occur. Finally, he wanted to preserve the WMD- and missile-related intellectual capital to allow an Iraqi WMD

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<sup>188</sup> "Key Findings: Regime Strategic Intent," op. cit.

<sup>189</sup> Ibid., pp. 23-24, 65, 70.

<sup>190</sup> Ibid., pp. 52-53, 85, 93.

<sup>191</sup> Central Intelligence Agency, *Misreading Intentions: Iraq's Reaction to Inspections Created Picture of Deception*, Iraq WMD Retrospective Series, January 5, 2006, partially declassified, available at <https://www.cia.gov>.

capability to be reconstituted in the future. This intellectual capital included scientific and technical knowledge and experience from past Iraqi accomplishments. The preservation of intellectual capital included the retention of technical personnel, key technical documents, and dual-use capabilities that could plausibly be explained to inspectors as non-military in nature. According to the ISG assessment, Saddam placed great value in possessing WMD capabilities. In his view, “WMD helped to save the Regime multiple times.” During the 1980-1988 Iran-Iraq War, Saddam launched extensive chemical weapons and missile attacks in an effort to defeat Iran. Moreover, Saddam believed WMD had deterred Coalition Forces from pressing their attack beyond the goal of freeing Kuwait. WMD had even played a role in crushing the Shi’a revolt in the south following the 1991 cease-fire.<sup>192</sup>

Iraq initially tried to get sanctions lifted without revealing the full extent of its WMD programs as required by UNSC resolutions. Apparently, Saddam believed that seeming to comply would be sufficient. Iraq initially hid key evidence documenting the extent of its WMD programs—particularly its nuclear and biological weapons programs. For example, in April 1991, Iraq declared that it had neither a nuclear weapons program nor an enrichment program for nuclear material. Inspections in June and September 1991 proved that Iraq had lied on both counts.<sup>193</sup> While not quite as blatant, declarations on chemical weapons and missile programs were also incomplete and inaccurate.<sup>194</sup>

The high value that Saddam placed on possessing WMD capabilities contributed to deliberate Iraqi violations of the agreement. A partially declassified CIA assessment of the difficulties encountered trying to verify the Iraqi WMD declarations and extent of Iraqi WMD dismantlement helps to understand Iraqi activities in the early phase of UNSCOM inspections. Apparently, Saddam had directed that chemical weapon capabilities and missiles be destroyed early in the UNSCOM inspection process. However, he also directed that Iraq conceal its biological weapons programs and its nuclear weapon development efforts. As noted earlier, these capabilities were not included in initial Iraqi WMD declarations. Saddam had ordered much of the incriminating documentation to be destroyed, except for documents and equipment needed in the future to reconstitute these capabilities. As characterized by the CIA report, Iraq “early established [a] pattern of ‘cheat and retreat.’ Iraq concealed items and activities in the early 1990s, and when detected, attempted to rectify the shortcomings, usually secretly and without documentation. Those cover-ups were seen to validate analytic assessments that Iraq intended to deny, deceive, and maintain forbidden capabilities.”<sup>195</sup> According to Charles Duelfer, initial deceptions and lies

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<sup>192</sup> “Key Findings: Regime Strategic Intent” op. cit., p. 1.

<sup>193</sup> Central Intelligence Agency, *Misreading Intentions*, op. cit.

<sup>194</sup> Iraq submitted to UNSCOM and the IAEA numerous declarations over the period of this case study. The first was in April 1991, revised shortly thereafter; another nuclear declaration was submitted in July 1991. Then came the series of supposed “full, final and complete disclosures” (FFCD) required by UNSCR 707 in August 1991: March 1992, first FFCD on nuclear; May 1992, first on BW and missile programs; June 1992, first on CW; March 1995, second on BW and CW; August 1995, third on BW; November 1995, second on missiles; March 1996, second on nuclear; June 1996, fourth on BW, third on CW and third on nuclear; July 1996, third on missiles; September 1997, fifth on BW; March 1998, fourth on nuclear. Finally, in December 2002, Iraq submitted the supposedly “currently accurate, full and complete declaration of all aspects of its programmes to develop chemical, biological, and nuclear weapons, ballistic missiles, and other delivery vehicles,” required by UNSCR 1441 of November 2002. UNSCOM, *Chronology of Main Events*, December 1999, available at <http://www.un.org>; UNMOVIC, *Notes for briefing the Security Council regarding inspections in Iraq and a preliminary assessment of Iraq’s declaration under paragraph 3 of resolution 1441 (2002)*, December 19, 2002, available at <http://www.un.org>; and Iraq Nuclear Verification Office (INVO), *INVO and Iraq Chronology*, November 2004, available at <http://www.iaea.org>.

<sup>195</sup> Central Intelligence Agency, *Misreading Intentions*, op. cit., p. i.

“led Iraq down a path that required increasingly complicated lies, one building on the next, until the entire deception would suddenly collapse.”<sup>196</sup>

Because the UNSCOM WMD inspections were conducted under the terms of a UN cease-fire resolution, the prospect of resuming military operations to force Iraqi compliance remained, at least technically, an option. After large numbers of military forces were withdrawn from the region, this threat, with the exception of limited airstrikes, became less credible.

**3. *Had the violator accepted the agreement willingly or under duress? Was the acceptance of the agreement the result of a strategic decision or was it a tactical expedient?***

The cease-fire agreement with Iraq was essentially imposed under duress following the disastrous Iraqi military performance during the 1991 Gulf War. Iraq grudgingly accepted the cease-fire agreement which did not require the ouster of Saddam Hussein. This was a tactical expedient. Duelfer characterized the situation in the following manner: “Saddam refused to admit that Iraq lost the war in 1991. His diplomats were always quick to point out that the resolution ending the war was a cease-fire agreement, not a peace treaty or capitulation. This was not simply bombastic propaganda. Saddam saw it only as a temporary setback.”<sup>197</sup>

Also, as noted earlier, in the aftermath of the 1991 Gulf War, Saddam took deliberate steps to lay the groundwork for the future reconstitution of Iraq’s WMD and missile capabilities. For example, in mid-1995, an informant reported on a previously unknown cache of WMD-related documents that were hidden at “a chicken farm” near Baghdad. These documents provided technical details that would have been helpful in reconstitution efforts. This seems to indicate that seeming compliance by Iraq was a tactical expedient.

**4. *Were there aspects of the agreement that increased the likelihood of violations? Were there deficiencies in verification capabilities that the violator was able to exploit?***

As discussed above, Iraq’s obligations relevant to this case study derived from a series of UNSC resolutions between 1991 and 2002. These resolutions were intended to punish Iraq for its violations of international law, accomplish the verified elimination of Iraq’s WMD capabilities, and impose monitoring systems to help ensure Iraq’s compliance in the future. The potential of lifting economic sanctions was conditioned on the cooperation of Iraqi authorities in providing a full and complete accounting and eliminating Iraq’s WMD, prohibited missiles, and associated materials, equipment and facilities. All of this was to be accomplished without an occupying force and while leaving Saddam and his regime in place in Iraq. Charles Duelfer described the inspection process this way: “The reality was that it was a fundamentally flawed and unstable system. The [security] council could not force compliance without sanctions or military threat.”<sup>198</sup>

Several factors contributed to Iraqi noncompliance with the letter and spirit of agreements. First, the initial UNSC resolutions did not specify exactly what would be necessary to certify that Iraq

<sup>196</sup> Duelfer, *Hide and Seek: The Search for Truth in Iraq*, op. cit., p. 79.

<sup>197</sup> “Charles Duelfer’s Transmittal Message,” 23 September 2004, in *Comprehensive Report of the Special Advisor to the DCI on Iraq’s WMD*, op. cit., p. 3.

<sup>198</sup> Duelfer, *Hide and Seek: The Search for Truth in Iraq*, op. cit., p. 156.

had complied fully with its obligations. UNSC members had varying self-interests in having sanctions on Iraq lifted and these perspectives biased each country's view on what constituted full compliance by Iraq. Further, as mentioned earlier, the member states comprising the UNSC changed periodically. This made it more difficult to maintain a stable consensus on Iraqi compliance.

Finally, as additional resolutions were approved, the overall requirements on Iraq and enthusiasm of UNSC members changed over time. For example, UNSCR 687 (April 1991) called for Iraqi declarations and verified destruction of WMD and missile capabilities. Later that year, UNSCR 715 (October 1991) added the requirement for long-term monitoring of potential WMD reconstitution sites. Over four years later, UNSCR 1051 (March 1996) further added the requirement for monitoring Iraqi dual-use items. In particular, in 1991 the UNSC approved limited export and sale of Iraqi oil with the proceeds to be used for humanitarian purposes, and in 1995 expanded this to the Oil-for-Food program. As noted earlier, this program was corrupted by clever Iraqi officials with the willing cooperation of states which were charged with enforcing UN resolutions.

The open-ended requirements on Iraq, the norm of secrecy within Saddam's regime, lack of trust between Iraq and UN inspectors, and differences among UNSC members on how strictly to adhere to resolutions (particularly regarding sanctions) resulted in friction which would eventually lead to the crumbling of the inspection regime.

**5. *Were the proscribed capabilities easy or hard to conceal? Could they be clandestinely obtained from third parties?***

Iraq tried to conceal the full extent of its WMD programs, in particular (until the Kamel revelations in 1995) the biological and nuclear weapon development programs. Some capabilities associated with chemical and biological weapon capabilities could be easily hidden and some were plausibly dual-use. Even some important nuclear material enrichment equipment, such as calutrons, could be removed from experimental facilities and hidden. Also, as discussed above, technical records and reference documents that could be useful in the reconstitution of WMD programs could be hidden in locations, such as the "chicken farm," that inspectors might not visit, except by accident or with the help of an insider informant. According to then-IAEA Director General Hans Blix, because of leaks within the inspection teams to warn Iraqis, "most searches not based on specific intelligence ... would be meaningless. It cannot be difficult to find perfect hiding places for documents and diskettes."<sup>199</sup>

According to the ISG assessment: "Companies in Syria, Jordan, Lebanon, Turkey, UAE, and Yemen assisted Saddam with the acquisition of prohibited items through deceptive trade practices. In the case of Syria and Yemen, this included support from agencies or personnel within the government itself."<sup>200</sup> The same assessment documented extensive Iraqi clandestine efforts

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<sup>199</sup> Blix, *Disarming Iraq*, op. cit., p. 26.

<sup>200</sup> "Key Findings – Regime Finance and Procurement," in Central Intelligence Agency, *Comprehensive Report of the Special Advisor to the DCI on Iraq's WMD*, op. cit.

to procure prohibited missile components and technological assistance, especially from North Korea, Syria and Russian entities.<sup>201</sup>

Regarding the nuclear weapon development program, inspectors from the IAEA were aided by information from their home-country intelligence services. In fact, some of the most sensational discoveries were made by an inspection team led by an American, David Kay. Guided by tips from U.S. intelligence, in June 1991 Kay led his team on a deliberately circuitous route before converging on an Iraqi truck park. There they found a number of trucks loaded with calutrons which Iraq scientists had been using in their attempt to enrich uranium. The inspection team hastily photographed the evidence in the trucks until Iraqi guards began firing their weapons in the air. Confronted with the evidence, Iraq finally declared that it had been trying to enrich uranium by several methods. Later that same year, Kay's team found documents detailing plans for the Iraqi nuclear weapon development program. Another incident involved Kay and his team with a number of relevant documents being detained by armed Iraqis in a standoff in a parking lot for several days. The Iraqis did not want the inspectors to leave with the suspect documents. The team remained on a bus and maintained constant contact with the outside world via broadcasts using satellite communications.<sup>202</sup> After a standoff lasting several days, the Iraqis allowed the UN inspectors to depart with the documents. International pressure generated by live broadcasts from the trapped inspectors appears to have played a significant role in the release of the UN team.

According to the CIA, after the flight of Hussein Kamel in 1995, Iraq admitted that it had hidden Scud-variant missiles and components to aid future reconstitution but asserted that these items had been unilaterally destroyed by late 1991. The UN could not verify these claims and thereafter became more wary of Iraq's admissions and instituted more intrusive inspections. However, debriefings of Iraqi officials in addition to some documentation suggest that Iraq did not retain such missiles after 1991. While other WMD programs were strictly prohibited, the UN permitted Iraq to develop and possess delivery systems provided their range did not exceed 150 km. This freedom allowed Iraq to keep its scientists and technicians employed and to keep its infrastructure and manufacturing base largely intact by pursuing programs nominally in compliance with the UN limitations. This positioned Iraq for a potential breakout capability.<sup>203</sup>

The CIA also reported that Iraq hid or destroyed documentation related to the production, consumption, and destruction of propellant for its Scud missiles because it would reveal that Iraq had produced its own oxidizer for these ballistic missiles. The destruction of these documents contributed to UNSCOM's inability to account for Iraq's propellant for its Scuds and fed suspicions that Iraq had retained a covert missile inventory.<sup>204</sup>

IAEA reports also indicated offers of support in 1990 by a "foreign national" – identified by unofficial sources as A.Q. Khan – "to provide, for financial reward, assistance and information on nuclear weapons design, weapon-usable nuclear material production and the procurement of critical components and materials." After first pretending not to recall the offer, Iraq insisted

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<sup>201</sup> "Delivery Systems," Central Intelligence Agency, *Comprehensive Report of the Special Advisor to the DCI on Iraq's WMD*, op. cit., pp. 57-66.

<sup>202</sup> Blix, *Disarming Iraq*, op. cit., pp. 24-25

<sup>203</sup> "Key Findings," in Central Intelligence Agency, *Comprehensive Report of the Special Advisor to the DCI on Iraq's WMD*, op. cit., p. 9]

<sup>204</sup> Central Intelligence Agency, *Misreading Intentions*, op. cit.

that it had not accepted it because of the risks of exposure. The IAEA reported it had “no evidence to contradict Iraq’s statement.”<sup>205</sup>

**6. When detected, was the perceived violation blatant or plausibly ambiguous? Were the consequences seen as serious or relatively unimportant?**

In general, most Iraqi violations were clear-cut and blatant. Iraqi declarations were consistently inaccurate and incomplete, and the access of inspectors to some important sites, personnel and documentation was denied or at least impeded. Some UN officials later would write about the implausible explanations from Iraqi officials when their earlier declarations were proven to be incomplete. Some explanations were considered “absurd” by UN inspectors.<sup>206</sup>

Even in the face of such clear violations, the secretive, authoritarian regime of Saddam Hussein managed to manipulate some UN participants in an attempt to gain more control over the inspection process and limit consequences. As noted earlier, the Iraqis reportedly used bribes and economic incentives to buy the support of countries that had influence in the UNSC, most notably Russia and France.<sup>207</sup> In particular, the “Oil-for-Food” Program was exploited blatantly by Iraq with the willing cooperation of states which were charged with enforcing UN resolutions.<sup>208</sup>

Over time, Iraqi manipulation of UN-authorized inspections, as well as WMD-inspection fatigue among participating member states, had the effect of fracturing the unity of UNSC members against Iraq. This lack of unity can be illustrated by the UNSC vote in December 1999 to continue chemical weapons, biological weapons and missile-related inspections under a new organization—UNMOVIC. China, France, Malaysia and Russia all abstained, underscoring the weakening over time of international consensus to require Iraqi compliance.<sup>209</sup> Although, Iraqi deceptions and obstruction resulted in UNSC decisions to keep sanctions in place, the unity of effort among key members of the coalition deteriorated over time.

**7. Was the response to the violation undertaken by one or multiple parties? Were there differences within the government, or within and among the governments, responding to the violation? Were there differing assessments of the violation and possible responses? If so, what were the effects of these differences? If the response was unilateral in nature, was this a source of strength or weakness? If a number of states were involved, what were the advantages or disadvantages of a multilateral response?**

The Iraq WMD case study illustrates the potential pitfalls when a large number of countries, each with its own priorities and national interests, attempts a complex undertaking that spans several years.

<sup>205</sup> “Report of the Director General of the International Atomic Energy Agency,” op. cit., pp. 8-9, and Michael Laufer, A.Q. Khan *Nuclear Chronology*, Carnegie Endowment for International Peace, September 7, 2005, p. 4, available at <http://carnegieendowment.org>.

<sup>206</sup> Duelfer, *Hide and Seek: The Search for Truth in Iraq*, op. cit., p. 109.

<sup>207</sup> *Ibid.*, pp. 79, 170.

<sup>208</sup> Duelfer, *Hide and Seek: The Search for Truth in Iraq*, op. cit., p.165, 183-184.

<sup>209</sup> United Nations, *Security Council Establishes New Monitoring Commission for Iraq Adopting Resolution 1284 (1999) by Vote of 11-0-4*, Press Release, SC/6775, December 17, 1999, pp. 1-2, available at <http://www.un.org>.

The broad coalition of countries, led primarily by the United States and Great Britain, included those that developed and approved UNSC resolutions, provided military forces to the coalition to eject Iraqi forces from Kuwait, and contributed experts and other personnel to UNSCOM, UNMOVIC, and IAEA inspection teams. These countries were to work together to compel Iraq to document its programs to develop chemical, biological, and nuclear weapons and the means for their delivery, certify as accurate the remaining WMD inventory, verify destruction of delivery weapons and WMD, and implement monitoring of key Iraqi sites so that Iraqi attempts at WMD reconstitution could be more readily detected.

The United States and Great Britain were the most stalwart of the participating UNSC members in pushing for a complete accounting of Iraqi WMD programs and monitoring to ensure future compliance. Some UNSC members, most notably France and Russia, had pending business arrangements with Iraq and, therefore, a strong interest in having the inspections concluded promptly and favorably. Overall, for such a large number of countries with internal government transitions and diverse self-interests to maintain unity of purpose and agreement on details for WMD inspections over more than a decade was extremely difficult and, in retrospect, appears to have been unrealistic.

*The large number of participants undermined the process.* The significant number of countries represented in the UNSC and participating in the UNSCOM and IAEA inspections of Iraq produced problems in implementing the sanctions and conducting inspections. Unity of purpose was very difficult to sustain. These countries had diverse interests; for some this included business arrangements with Iraq. As noted, resuming these economic ventures was at odds with overall UNSC resolutions. As Charles Duelfer concluded regarding his experiences, “I firmly believe that the Security Council, a disparate group with different and evolving agenda, could not sustain the will to force Iraqi acceptance of intrusive inspections and monitoring, essentially in perpetuity.”<sup>210</sup>

*Lack of unity over interpreting UNSC resolutions.* The interpretation of UN resolutions was debated by the very countries that had approved them. For example, the United States and United Kingdom interpreted UNSCR 687 to mean that Iraq had to disarm completely before the UNSC would lift any of the sanctions. In contrast, France and Russia wanted sanctions to be lifted in piecemeal fashion to reward Iraq for significant, yet incomplete, compliance with its disarmament obligations.<sup>211</sup> According to Charles Duelfer, France wanted access to Iraq’s oil and military markets while Russia wanted to resume weapon sales to Iraq and to recoup the roughly seven to nine billion dollars of debt which Iraq owed Russia for prior weapons purchases.<sup>212</sup> Duelfer called the ambiguity over the conditions for the lifting of sanctions on Iraq “the fatal flaw in the original [UN] resolution.”<sup>213</sup>

*Varying Susceptibility to Bribes.* The Iraqis bribed UN inspectors to obtain information on planned inspections and to impede inspections. Iraqi Foreign Minister Tariq Aziz is reported to have told Saddam that UN Secretary-General Boutros Boutros-Ghali advised Iraq to bribe UN inspectors. Reportedly the Secretary-General told Aziz to “Buy them like others do; why don’t you do the

<sup>210</sup> Duelfer, *Hide and Seek: The Search for Truth in Iraq*, op. cit., p. 144

<sup>211</sup> Woods, Palkki, Stout, op. cit., p. 255.

<sup>212</sup> Duelfer, *Hide and Seek: The Search for Truth in Iraq*, op. cit., p. 105.

<sup>213</sup> *Ibid.*, p. 105



same?" According to captured documents, Iraqi bribes were used to gain increased support from Russia, France, and China to end inspections and lift sanctions.<sup>214</sup>

*Changing political landscape.* The extended time frame over which this case study played out was accompanied by an ever-changing political landscape in the United States and across the world. For example, in the United States this saga was dealt with by the George H.W. Bush administration, the William J. Clinton administration, and the George W. Bush administration. The changing domestic and international scene affected the energy which each administration devoted to dealing with Iraqi disarmament. Similar leadership successions occurred in other countries as well as in the UN, UNSCOM/UNMOVIC, and the IAEA.

By the late-1990s, Kofi Annan had succeeded Boutros-Ghali as Secretary-General of the UN. Annan hoped to resolve the developing stalemate between UNSCOM and Iraq and, independent of the UNSC, began making deals with the Iraqis regarding their disarmament obligations. Saddam and his senior officials are on record discussing ways to exploit this situation for their benefit.<sup>215</sup>

The composition of the UNSC also changed periodically. The fifteen-member body is comprised of five permanent members (the United States, the United Kingdom, France, the Soviet Union/Russia, and China) each with specific interests and priorities. In addition, ten non-permanent members are elected to the UNSC for two-year terms. As this case study unfolded, the number of countries with influence in approving the numerous UNSC resolutions grew to be large. With this ever-changing political landscape, trying to preserve a continuity of purpose in enforcing UN resolutions became extremely difficult.

**8. *What types of responses to the violations were considered or adopted? Inaction? Accommodation? Negotiation of a revised or new agreement? Diplomatic pressure? Retaliatory breach of another arms control constraint? Economic sanctions? Military improvements, threats, or actions? How effective were those that were pursued?***

As detailed earlier, responses to Iraq's violations included the sustainment of economic sanctions and the continuation of inspections, as well as the threat to resume using military force to punish Iraq and degrade its military capabilities, including but not limited to WMD. That threat was implemented in late 1998 with Operation Desert Fox and in 2003 with Operation Iraqi Freedom.

Economic sanctions seemed to have had a significant effect on Iraq's leaders and certainly affected the general population. However, Iraqi manipulation of the Oil-for-Food Program and black market activities provided income to Iraq that significantly lessened the impact of UN-imposed sanctions. According to data cited by Hans Blix:

- In 1990, before sanctions had fully taken effect, the value of Iraq's imports had been \$7.6 billion.
- In each of the next five years, when sanctions were fully effective, the annual value of imports had decreased to about \$1.0 billion.

<sup>214</sup> Ibid., pp. 283, 287-292.

<sup>215</sup> Ibid. p. 287.

- In 1997, when Iraq was allowed to sell oil and import under the Oil-for-Food Program, the value of imports had risen to \$4.2 billion.
- In 1999, the import value had risen to \$8.52 billion and in 2000 it was \$13.7 billion.<sup>216</sup> These figures illustrate the effect of the corruption of the Oil-for-Food Program with complicity of UNSC members.

Finally, when Iraqi obstructionism threatened to shut down the inspection and verification process itself, the prospect of resuming military operations was threatened, primarily by the United States and Great Britain. The UN authorization to use “all available means” was still active and the potential to end the cease-fire was retained as an option. Punitive military strikes were resumed in December 1998 with the execution of Operation Desert Fox. Nevertheless, inspections did not resume for four years.

Initially, the sustainment of economic sanctions and continuation of UNSCOM and IAEA inspections constituted the primary response to incomplete Iraqi WMD declarations, deception, and obfuscation. Also, the April 1991 cease-fire resolution, UNSCR 687, remained effective and was periodically reaffirmed. As noted above, the use of military force in late 1998 resulted in less cooperation by the Iraqis who believed that sanctions might never be lifted, and thus seems to have been counterproductive. On the other hand, the threat made in November 1992 of much greater military force led Iraq to increased – if still incomplete – compliance.

**9. *If the response involved inducements as well as penalties, is there evidence suggesting that the combination was more effective than either alone?***

Initially, the potential lifting of economic sanctions appears to have been effective as an inducement to motivate Saddam and his senior leaders to cooperate with UN inspections—at least to some degree. Iraq went to significant lengths to appear to do what was necessary to comply with the cease-fire resolution. In his book describing events during the Iraq WMD inspections, Hans Blix observed: “Each time the [Iraqi] regime made what it saw as concessions on the inspection front, it had been in response to the carrot being dangled in front of it: the possibility of an UNSCOM report that disarmament had been achieved, and a resulting lifting of sanctions by the Security Council.”<sup>217</sup>

Early on, Saddam appears to have believed that UN inspectors would report satisfactory findings and the UNSC would lift sanctions promptly. However, Saddam quickly appears to have regretted the decision to appear to cooperate with UN inspections and ordered subordinates to obstruct inspections. In August 1991, Saddam was recorded as saying “I have given them everything: the missiles, and the chemical, biological and nuclear weapons. They didn’t give you anything in exchange, not even a piece of bread. ...They have become worse.”<sup>218</sup>

However, as noted earlier, the Iraqi regime was not inclined to be transparent and cooperative with all the countries represented in the coalition that conducted inspections and approved UNSC resolutions. As time wore on and the prospects for the lifting of sanctions diminished, Iraq

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<sup>216</sup> Blix, *Disarming Iraq*, op. cit., pp. 56-57.

<sup>217</sup> Blix, *Disarming Iraq*, op. cit., p. 36.

<sup>218</sup> Woods, Palkki, Stout, op. cit., p. 257.

developed methods to obstruct inspections and limit the intended effect of sanctions. The Iraqis were aided by unauthorized activities with several other countries.

**10. What tools and tactics were available to the violator to inhibit, fend off, or withstand a response? Which were chosen and why? What was their effectiveness?**

The Government of Iraq used a variety of methods to impede the effectiveness of inspections and to fracture the coalition against it. The objective was to limit the effectiveness of economic sanctions, to lobby for the lifting of sanctions, and to retain a base for reconstituting WMD and missile programs after sanctions were gone.

According to the 2004 ISG assessment, Saddam's "initial belief that UN sanctions would not last, changed ... when the UNSC did not lift sanctions after he believed resolutions were fulfilled."<sup>219</sup> "Saddam directed the Regime's key ministries and governmental agencies to devise and implement strategies, policies, and techniques to discredit the UN sanctions, harass UN personnel in Iraq, and discredit the US. At the same time, according to reporting, he also wanted to obfuscate Iraq's refusal to reveal the nature of its WMD and WMD-related programs, their capabilities, and his intentions."<sup>220</sup>

*Impede effectiveness of inspections.* Saddam took advantage of the lack of an occupying military forces and the UN need for Iraqi cooperation in conducting inspections. The Iraqis delayed inspection teams, deployed their own teams to observe each of the inspectors, and conspired to keep UNSCOM and the IAEA from finding anything that Iraq did not want discovered. As discussed earlier, help from national intelligence services and from the Kamel defection occasionally forced Saddam to reveal more than he otherwise would have revealed.

*Circumvention of sanctions.* Although not directly involving Iraq's WMD obligations, it is worth noting that Iraq had some success in circumventing UN sanctions. Saddam had reluctantly accepted the UN's Oil-for-Food program. However, by 1996, he soon recognized its economic value and additional opportunities for further manipulation and influence of the UNSC member states. Therefore, he resigned himself to the continuation of UN sanctions, understanding that eventually they would become a "paper tiger" regardless of continued U.S. resolve to maintain them. "Throughout sanctions, Saddam continually directed his advisors to formulate and implement strategies, policies, and methods to terminate the UN's sanctions regime established by UNSCR 661. The Regime devised an effective diplomatic and economic strategy of generating revenue and procuring illicit goods utilizing the Iraqi intelligence, banking, industrial, and military apparatus that eroded United Nations' member states and other international players' resolve to enforce compliance."<sup>221</sup>

*Bribes and manipulation of inspection participants.* The CIA reported the extensive use of bribes and corruption among Iraqi and UN participants. For example:

One aspect of Saddam's strategy of unhinging the UN's sanctions against Iraq, centered on Saddam's efforts to influence certain UNSC permanent members, such as Russia,

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<sup>219</sup> Idem.

<sup>220</sup> "Key Findings," in Central Intelligence Agency, *Comprehensive Report of the Special Advisor to the DCI on Iraq's WMD*, op. cit.

<sup>221</sup> Idem.

France, and China and some nonpermanent members (Syria, Ukraine) to end UN sanctions. Under Saddam's orders, the Ministry of Foreign Affairs (MFA) formulated and implemented a strategy aimed at these UNSC members and international public opinion with the purpose of ending UN sanctions and undermining its subsequent OFF program by diplomatic and economic means. At a minimum, Saddam wanted to divide the five permanent members and foment international public support of Iraq at the UN and throughout the world by a savvy public relations campaign.<sup>222</sup>

Iraq also offered economic incentives to UNSC members, especially Russia, France, and China, that would be effective when sanctions were lifted. They worked around existing sanctions with several countries to exploit the Oil-for-Food Program in order to bring needed capital into Iraq. In addition, bribes were offered to members of UNSCOM inspection teams in exchange for information on UNSCOM plans and inspections.

According to the 2004 ISG report, Saddam bought support, particularly among French, Russian, and Chinese officials to whom he would donate oil "vouchers" that could be resold for large profits. One reported recipient was Benon Sevan, a former U.N. official in charge of humanitarian relief and the Oil-for-Food Program itself. The scandal apparently went all the way to the top, to U.N. Secretary General Kofi Annan's son. Needless to say, the countries that benefited most from these vouchers were also the countries that were most adamantly opposed to the 2003 Iraq invasion.<sup>223</sup> Throughout the 1990s, even with sanctions in place, Iraq was able to amass an estimated \$11 billion in revenue using UN-approved methods plus illicit methods such as black market operations.<sup>224</sup>

In early 1998, after WMD-related inspections in Iraq had been suspended, Iraq sought to circumvent the inspection process by appealing directly to higher authority at the United Nations—the Secretary-General. This resulted in concessions to Iraq by UN Secretary-General Kofi Annan. Specifically, in order to accommodate Iraqi concerns about "sovereignty and security" as well as "dignity", new procedures for inspections were specified. These procedures called for a group of senior international diplomats "to accompany the inspectors, like chaperones."<sup>225</sup>

**11. *Were there important asymmetries in the stakes and resolve between the violator and enforcer(s) that had a significant influence on the outcome of the case?***

An asymmetry of stakes was clearly evident between Iraq and the coalition formed to oppose and reverse its invasion of Kuwait and inspect and verify Iraq's compliance with UNSC resolutions. For Saddam, the survival of the regime was at stake. Saddam worried about Iraq's vulnerabilities given its potential enemies in the region, especially Iran. For Saddam, the need to deter its regional enemies apparently was the motivation for him to give the appearance of retaining some WMD capability and remaining resolute even when confronted by an international coalition. The

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<sup>222</sup> *Idem*.

<sup>223</sup> "Regime Finances Section," in Central Intelligence Agency, *Comprehensive Report of the Special Advisor to the DCI on Iraq's WMD*, op. cit., pp. 164- 173 and 190-191.

<sup>224</sup> *Ibid*, p. 22.

<sup>225</sup> Blix, *Disarming Iraq*, op. cit., p. 34.

United States, Great Britain, and other UNSC members had no comparable stake in this engagement with Iraq.

An asymmetry of stakes also existed among the permanent members of the UNSC. In particular, the United States had a strategic interest in reducing the WMD threat to its regional allies, including Israel and Saudi Arabia. Other permanent UNSC members did not have similar concerns. In addition, France, Russia, and to a lesser extent China, had economic linkages to Iraq and therefore were motivated to have sanctions on Iraq lifted so that business arrangements could resume.

**12. On the whole, why did the deterrence of the violation fail? Why did efforts to restore the compliance succeed or fail?**

*Overall result.* If judged solely by one of its intended objectives—eliminating, at least for a time, Iraq’s WMD and delivery capabilities—the UN efforts could be considered to have been successful in the short term. According to ISG and CIA assessments:

- Desert Storm and subsequent UN resolutions and inspections brought many of Iraq’s delivery system programs to a halt. While much of Iraq’s long-range missile inventory and production infrastructure was eliminated, Iraq, until late 1991, kept some items hidden to assist future reconstitution of the force. This decision and Iraq’s intransigence during years of inspection left many UN questions unresolved.<sup>226</sup>
- After the flight of [Hussein Kamel] in 1995, Iraq admitted that it had hidden Scud-variant missiles and components to aid future reconstitution but asserted that these items had been unilaterally destroyed by late 1991. The UN could not verify these claims and thereafter became more wary of Iraq’s admissions and instituted a regime of more intrusive inspections.<sup>227</sup>
- Iraq hid or destroyed documentation related to the production, consumption, and destruction of propellant for its Scud missiles because it would reveal that Iraq had produced its own oxidizer for these ballistic missiles. The destruction of these documents contributed to UNSCOM’s inability to account for Iraq’s propellant for its Scuds and fed suspicions that Iraq had retained a covert missile inventory.<sup>228</sup>
- Saddam never abandoned his intentions to resume a chemical weapons program effort when sanctions were lifted and conditions were judged favorable. Saddam and many other Iraqis regarded chemical weapons as a proven capability against an enemy’s superior numerical strength, a weapon that had saved the nation at least once already—during the Iran-Iraq war—and contributed to deterring the Coalition in 1991 from advancing to Baghdad.<sup>229</sup> Saddam also wanted to resume a longer-range ballistic missile capability and incremental nuclear program, as well as a biological weapons program “when and if the opportunity arose.”<sup>230</sup>

<sup>226</sup> “Key Findings,” in Central Intelligence Agency, *Comprehensive Report of the Special Advisor to the DCI on Iraq’s WMD*, op. cit., p. 9.

<sup>227</sup> *Idem.*

<sup>228</sup> Central Intelligence Agency, *Misreading Intentions*, p. 12.

<sup>229</sup> *Ibid.*, p. 13.

<sup>230</sup> “Key Findings: Regime Strategic Intent,” and “Key Findings: Biological,” in Central Intelligence Agency, *Comprehensive Report of the Special Advisor to the DCI on Iraq’s WMD*, op. cit.

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The net result was the largely successful elimination of the *immediate* threat posed by Iraq's WMD and associated weapons delivery programs. However, the refusal to resolve UNSC demands on Iraq for a complete accounting of its WMD took its toll on the patience and motivations of coalition members, as well as the Iraqi regime. As a result, the coalition and inspection regime unraveled and military conflict eventually resumed.

*Inconsistent Iraqi objectives.* Of importance for this case study is the effort by the Iraqis to try to appear to be cooperating with the UN inspectors so sanctions would be lifted while, at the same time, working to appear strong-willed and independent, so as not to appear weak to its regional adversaries, especially Iran. By these conflicting actions, Iraqi leaders set in motion events that would eventually undermine their objective of having sanctions lifted promptly—both through their efforts to obstruct inspections and when the initial WMD declaration provided to the UN was revealed to be purposely misleading.

*Unrealistic expectations of UN members.* The procedures used by UN organizations to try to develop a verifiable history of Iraq's WMD programs required transparency and the full cooperation of the Iraqis. Given the Iraqi regime's secretive and authoritarian nature, the expectation that Saddam Hussein's regime would fully cooperate and eliminate in a verifiable manner all WMD without occupation and direct oversight by military forces was unrealistic. Transparent behavior and cooperation with international organizations comprised of numerous countries, some of which Iraq considered as enemies, were not consistent with Saddam's *modus operandi*. Iraq is located in a part of the world in which perceptions of strength translate to security. Saddam did not want to appear weak, particularly because Iraq had recently fought a costly war with Iran that ended in a stalemate.

*Limited durability of the effects of sanctions.* Economic sanctions on Iraq appear to have been effective for a time. This is evidenced by the dramatic decline in Iraqi trade with other countries in the years immediately after sanctions were imposed and by Saddam's orders to destroy most (but not all) WMD – albeit not in accordance with UNSC-required procedures. However, over time Iraq convinced the UNSC to approve some relief, supposedly for humanitarian purposes. The Oil-for-Food Program was instituted for this purpose. Bribes, corruption, and the manipulation of the Oil-for-Food Program significantly mitigated the effectiveness of sanctions and appear to have helped embolden Iraqi obstructionism over UNSCOM inspections.



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## Chapter Five: North Korea Case Study

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### ***Case Study Four: United States and others versus the North Korean violations of the Nuclear Nonproliferation Treaty, the International Atomic Energy (IAEA) Safeguards Agreement, the 1992 North-South Denuclearization Agreement, the 1994 U.S.-North Korea Agreed Framework, the 2005 Joint Statement of the Six-Party Talks, and United Nations Security Council Resolutions, 1992-2009***

#### **Overview**

Throughout the period of this case study, North Korea's compliance with nuclear agreements and international resolutions followed a repetitive, cyclical pattern. In the words of one close observer and policymaker: "Recounting the nuclear crises with North Korea is a bit like the movie *Groundhog Day*. The script looks something like this: the IAEA declares the North is in violation of the NPT; Pyongyang threatens withdrawal from the NPT; the United States and United Nations condemn and sanction North Korean intransigence; and North Korea retaliates by undertaking production of more plutonium and/or a nuclear test."<sup>231</sup>

While apt, this characterization omits another important element of the cycle: the tendency of the United States to offer inducements to North Korea in the form of concessions, and China's failure to enforce strong sanctions against Pyongyang.

The list of nuclear-related international obligations that the North Korean violated during the period of this case study is a long one:

- The NPT, to which it acceded in December 1985;
- The January 1992 IAEA Safeguards Agreement;
- The January 1992 Joint Declaration of South and North Korea on the Denuclearization of the Korean Peninsula (hereafter "Denuclearization Agreement");
- The October 1994 Agreed Framework between the United States and the Democratic People's Republic of Korea;
- The September 2005 Joint Statement of the Fourth Round of the Six-Party Talks;
- The February and October 2007 Implementation Agreements for the Joint Statement; and
- UNSCRs 1695 (July 2006), 1718 (October 2006) and 1874 (June 2009).<sup>232</sup>

The main actors involved with those agreements, in addition to North Korea, were South Korea, the United States, Japan, China, Russia, the Board of Governors of the IAEA and the UNSC. The focus in the 1990s was on bilateral agreements with North Korea: first by South Korea, and then by the United States. During the George W. Bush Administration, attention shifted to multilateral

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<sup>231</sup> Victor Cha, *Idem*.

<sup>232</sup> As of this writing, the UNSC has passed four subsequent nuclear-related sanctions resolutions on North Korea, which were after the time period of this case study: UNSCR 2094 (March 2013); 2270 (March 2016); 2321 (November 2016); and 2375 (September 2017). All four, like UNSCRs 1718 and 1874, were issued in response to North Korean nuclear tests. Although UNSCR 1695 responded to ballistic missile launches and was not focused on nuclear issues, it did call on North Korea to return to the NPT and the Six-Party Talks.



efforts -- in the Six-Party Talks,<sup>233</sup> the IAEA and the UNSC. Early in the Obama Administration, the sole focus came to be the UNSC.

### The Agreement-Violation Cycle

North Korea joined the NPT reportedly under pressure from the Soviet Union, which insisted first on IAEA safeguards and then on NPT membership as a condition for providing two nuclear power reactors to Pyongyang.<sup>234</sup> It did not take long for the regime to violate the Treaty. In what became a continuing pattern, the visible compliance issue involved monitoring and verification measures. But behind North Korea's on-again, off-again refusal to accept international nuclear monitoring lay its determination to preserve and advance its nuclear weapons program.

Article III of the NPT requires that each non-nuclear weapon state party conclude a comprehensive safeguards agreement with the IAEA within 18 months of Treaty accession.<sup>235</sup> North Korea did not comply. First it allowed two successive 18-month periods to lapse; then in 1989, it demanded that the United States first withdraw its nuclear weapons from the Peninsula.<sup>236</sup>

In September 1991, President George H.W. Bush announced the first of two Presidential Nuclear Initiatives (PNIs), which included the elimination of all U.S. short-range ground-launched nuclear weapons and the removal from deployment of all U.S. sea-launched nuclear cruise missiles.<sup>237</sup> Although the primary focus of the PNIs was on European-based weapons, they included the withdrawal of all U.S. nuclear weapons from South Korea. That decision set in motion the process that led to the 1992 North-South Denuclearization Agreement and to North Korean (temporary) compliance with Article III of the NPT.

In January 1992, North and South Korea completed the Joint Declaration on the Denuclearization of the Korean Peninsula, under which they committed not to produce, possess, store, deploy or use nuclear weapons, or to pursue uranium enrichment or nuclear reprocessing. The Denuclearization Agreement also provided for verification by mutually agreed inspections.<sup>238</sup> In keeping with the usual North Korean pattern, that provision was never implemented. The two sides met 13 times in 1992-1993, but were never able to agree on inspection locations. The South wanted to inspect the North Korean facilities at Yongbyon, while the North wanted to inspect U.S. military bases.<sup>239</sup> The failure to implement monitoring measures was not technically a violation of the Denuclearization Agreement. More important were North Korea's hidden

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<sup>233</sup> The Six Parties were China, Japan, North Korea, Russia, South Korea, and the United States.

<sup>234</sup> See Francois Carrel-Billiard and Christine Wing, *Nuclear Energy, Nonproliferation and Disarmament: Briefing Notes for the 2010 NPT Review Conference* (New York: International Peace Institute, April 2010), available at <https://www.ipinst.org>, p. 29, and David Fischer, "The DPRK's Violation of its NPT Safeguards Agreement with the IAEA," excerpt from *History of the International Atomic Energy Agency* (Vienna: IAEA, 1997), available at <https://www.iaea.org>, p. 1. Neither the Soviet Union nor Russia ever provided the reactors.

<sup>235</sup> *Treaty on the Nonproliferation of Nuclear Weapons*, available at [www.un.org](http://www.un.org).

<sup>236</sup> See Matthias Dembinski, "North Korea, IAEA Special Inspections and the Future of the Nonproliferation Regime," *The Nonproliferation Review*, Vol. 2, No. 2 (Winter 1995), p. 33, p. 39.

<sup>237</sup> See Susan J. Koch, *The Presidential Nuclear Initiatives of 1991-1992*, Case Study Series 5 (Washington, DC: National Defense University Press, September 2012).

<sup>238</sup> *Joint Declaration of the Denuclearization of the Korean Peninsula*, available at <https://2001-2009.state.gov>.

<sup>239</sup> B-K Kim, "Step-by-Step Nuclear Confidence Building on the Korean Peninsula: Where Do We Start?" International Institute for Science and International Security, *Building Nuclear Confidence on the Korean Peninsula: Proceedings of the July 23-24, 2001 Workshop*, available at [isis-online.org](http://isis-online.org), p. 154.

violations of the core elements of the agreement: its continued clandestine efforts to develop nuclear weapons and fissile material.

North Korea finally concluded an IAEA Safeguards Agreement in April 1992.<sup>240</sup> True to form, it violated that agreement immediately. In May 1992, North Korea submitted woefully incomplete nuclear material declarations to the IAEA, declaring a mere 90 grams of plutonium and seven nuclear facilities. In September, IAEA inspectors reported discrepancies in the report, and asked to inspect two facilities that the North had not declared. After North Korea refused that request, the IAEA Board of Governors in February 1993 issued its first resolution against North Korea, requiring it to accept a mandatory “special inspection” of the two facilities. In response, North Korea not only refused to comply, but gave notice of intent to withdraw from the NPT.<sup>241</sup>

Just days before NPT withdrawal was to take effect on June 12, 1993, senior U.S. and North Korean negotiators met in New York. The result was a Joint Statement on June 11, under which the two sides “agreed to principles of:

- Assurances against the threat and use of force, including nuclear weapons;
- Peace and security in a nuclear-free Korean Peninsula, including impartial application of fullscope [sic] safeguards, mutual respect for each other’s sovereignty, and non-interference in each other’s internal affairs; and
- Support for the peaceful reunification of North Korea.”

In exchange, the DPRK “decided unilaterally to suspend as long as it considers necessary the effectuation of its withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons.”<sup>242</sup>

Despite this agreement, North Korea systematically stymied IAEA inspection efforts over the next year. It allowed only limited IAEA activities, rather than the full implementation required by the IAEA to verify North Korean compliance and to resolve the inconsistencies in North Korea’s declarations. Then, in June 1994, Pyongyang gave notice of intent to withdraw from the IAEA.<sup>243</sup> In response, the United States considered various options – military, economic, diplomatic – none of which was deemed both effective and palatable. Diplomatic and economic action would have had little practical impact, while military options were all very risky – resulting in hundreds of thousands of casualties, if not far more.<sup>244</sup> Moreover, the United States had few allies in support of even economic sanctions, let alone military action. South Korea and Japan may have taken seriously the threats North Korea made several times in 1994 to retaliate militarily against any new economic sanctions.<sup>245</sup>

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<sup>240</sup> International Atomic Energy Agency Information Circular, *Agreement of 30 January 1992 between the Government of the Democratic People’s Republic of Korea and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons*, INFIRC/403, May 1992, available at <https://www.iaea.org>.

<sup>241</sup> Fischer, op. cit., pp. 1-2; and International Atomic Energy Agency, *Fact Sheet on DPRK Nuclear Safeguards*, n.d., available at <https://www.iaea.org>.

<sup>242</sup> Embassy of Korea in the U.S., *Joint Statement of Democratic People’s Republic of Korea and the United States of America, New York, June 11, 1993*” available at [www.nautilus.org](http://www.nautilus.org). See Also Joel S. Wit, Daniel B. Poneman and Robert L. Gallucci, *Going Critical: The First North Korean Nuclear Crisis* (Washington, DC: Brookings Institution Press, April 2004), Chapter 3.

<sup>243</sup> International Atomic Energy Agency General Conference, *Implementation of the Agreement between the Agency and the Democratic People’s Republic of Korea for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons* (INFIRC/403, GC(XXXVIII/19), September 16, 1994, available at <https://www.iaea.org>.

<sup>244</sup> See Wit, Poneman and Gallucci, op. cit., Chapter 7, and Ashton B. Carter and William J. Perry, *Preventive Defense: A New Security Strategy for America* (Washington, DC: Brookings Institution Press, 1999), pp. 123-133.

<sup>245</sup> See, for example, Wit, Poneman and Gallucci, op. cit., Chapter 5.

This “first North Korean nuclear crisis” was resolved (at least temporarily) in October 1994, when the United States and North Korea signed the Agreed Framework. Under that accord, Pyongyang would receive substantial benefits essentially for complying with its NPT, IAEA Safeguards and Denuclearization Agreement obligations.

In the Agreed Framework, the United States committed to:

- Provide formal assurances to North Korea against the threat of U.S. nuclear weapons use;
- Create an international consortium to supply two light water power reactors (LWRs) to the North;
- Arrange for heavy fuel oil (HFO) supplies to the North;
- Work with the North on means to store and dispose of spent fuel without reprocessing;
- Ease trade restrictions and progress toward diplomatic relations.

North Korea committed to:

- Remain an NPT party;
- Allow implementation of its IAEA safeguards agreement, although full compliance would await “significant completion” of the LWR project;
- “consistently take steps to implement” the 1992 Denuclearization Agreement, and engage in North-South dialogue;
- Freeze its graphite-moderate reactors and related facilities, and finish dismantling them when the LWR project was completed.<sup>246</sup>

While the Agreed Framework was a bilateral agreement, South Korea and Japan had a major role in its implementation. The Korean Peninsula Energy Development Organization (KEDO) was created to implement the LWR and HFO elements of the Agreed Framework. As of December 2005, the United States had contributed \$405.1 million, Japan \$498.8 million, and South Korea \$1,454.7 million to KEDO. The U.S. funds were spent primarily for HFO deliveries and administrative costs; the Japanese and South Korean funds went mostly to the LWR project – although neither reactor was ever built.<sup>247</sup>

The Agreed Framework collapsed in Fall 2002. In October, North Korea admitted privately to a U.S. Government delegation that it had a clandestine uranium enrichment program.<sup>248</sup> In response, the KEDO Executive Board<sup>249</sup> found the North in noncompliance with all of its nuclear obligations --- the NPT, IAEA Safeguards, the Denuclearization Agreement and the Agreed Framework – and suspended HFO deliveries as of December. It did the same with the LWR project the following year, finally deciding to terminate it in November 2005. All KEDO personnel were withdrawn from North Korea in January 2006.<sup>250</sup>

For several years after October 2002, North Korea consistently denied that it had any enrichment capability. In 2009, it announced enrichment work at a test stage, ostensibly aimed eventually at

<sup>246</sup> International Atomic Energy Information Circular, *Agreed Framework of 21 October 1994 between the United States of America and the Democratic People's Republic of Korea*, INFCIRC/457, November 2, 1994, available at <https://www.iaea.org>.

<sup>247</sup> Korean Peninsula Energy Development Organization, *Annual Report*, December 31, 2005, available at [www.kedo.org](http://www.kedo.org).

<sup>248</sup> North Korea's uranium enrichment violated the Agreed Framework even though that agreement explicitly mentioned only plutonium production, not uranium enrichment. However, the Agreed Framework required implementation of the 1992 Denuclearization Agreement, under which North and South Korea committed not to pursue uranium enrichment.

<sup>249</sup> The KEDO Executive Board members were the European Union, Japan, South Korea and the United States.

<sup>250</sup> Korean Peninsula Energy Development Organization, op. cit.

LWR fuel production.<sup>251</sup> Many officials and observers still doubted that the North Korean enrichment program was more than rudimentary. Doubts were finally resolved in 2010, when former Los Alamos Director Siegfried Hecker was escorted on a tour of a well-established, 2000-centrifuge facility. Many observers believe that North Korea's enrichment program advanced so far only because of assistance from A.Q. Khan.<sup>252</sup>

In December 2002, following the KEDO suspension of HFO deliveries, North Korea announced that it would restart the nuclear facilities frozen under the Agreed Framework. It cut all IAEA seals, disrupted surveillance equipment, and ordered all inspectors to leave the country. On January 6, the IAEA Board of Governors found North Korea in noncompliance with its Safeguards Agreement.<sup>253</sup> On January 10, Pyongyang announced that it would withdraw from the NPT the next day. North Korea claimed that it did not need to wait three months between announcement of intent and actual withdrawal from the Treaty, as required by Article X of the NPT. Instead it claimed that its 1993 announcement of intent to withdraw from the Treaty sufficed, because it had only suspended actual withdrawal one day before the end of the notification period. Many governments and observers questioned that argument, but China blocked any UNSC consideration of the legality of the withdrawal.<sup>254</sup>

Despite the IAEA's noncompliance finding, the UNSC did not impose any sanctions on North Korea until after Pyongyang's multiple missile launches in July 2006. The United States levied some new unilateral sanctions, but also pursued a diplomatic track. Unlike the Clinton Administration, the George W. Bush Administration officially refused bilateral negotiations – although in practice those were constant elements within a multilateral framework.<sup>255</sup>

The initial multilateral talks were trilateral, with the United States, North Korea and China in April 2003. The first round of the Six-Party Talks, which added South Korea, Japan and Russia, took place in August 2003. In an interesting example of the provocation-concession dynamic between the United States and North Korea, the following sequence occurred in one month in Fall 2003: North Korea implied it would test a nuclear weapon; President Bush said the United States was willing to participate in a formal multilateral commitment not to attack the North; and a senior North Korean official said North Korea already possessed a workable weapon – underscoring the regime's long-established flaunting of its most basic NPT obligations.<sup>256</sup>

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<sup>251</sup> Director of National Intelligence, *Unclassified Report to Congress on the Acquisition of Technology Relating to Weapons of Mass Destruction and Advanced Conventional Munitions, Covering 1 January to 31 December 2011*, available at <https://www.dni.gov>, p. 5.

<sup>252</sup> Siegfried S. Hecker, "Where Is North Korea's Nuclear Program Heading?" *Forum on Physics and Society, American Physics Society*, n.d. [2011], available at <https://www.aps.org>. See also David Albright, *North Korea's Alleged Large-Scale Enrichment Plant: Yet Another Questionable Extrapolation Based on Aluminum Tubes*, Institute for Science and International Security, February 3, 2007, available at [isis-online.org](http://isis-online.org); and Jonathan D. Pollack, "The United States, North Korea, and the End of the Agreed Framework," *Naval War College Review*, Vol. LVI, No. 3 (Summer 2003), pp. 28-39.

<sup>253</sup> International Atomic Energy Agency Media Advisory, *IAEA Board of Governors Adopts Resolution on Safeguards in North Korea*, 6 January 2003, available at [www.iaea.org](http://www.iaea.org). The resolution found North Korea in violation of its Safeguards Agreement, but did not address NPT compliance. Because the IAEA is not a party to the NPT, it cannot judge any state's compliance with the Treaty; however, it is a party to all Safeguards Agreements.

<sup>254</sup> See George Bunn and John B. Rhinelander, "NPT Withdrawal: Time for the Security Council to Step In," *Arms Control Today*, Vol. 35 (May 2005).

<sup>255</sup> See Christopher R. Hill, *Outpost, Life on the Frontlines of American Diplomacy: A Memoir* (New York: Simon and Schuster, 2014), pp. 205-209, and Charles L. Pritchard, *Failed Diplomacy: The Tragic Story of How North Korea Got the Bomb* (Washington, DC: Brookings Institution Press, 2007).

<sup>256</sup> Arms Control Association, *Chronology of U.S.-North Korean Nuclear and Missile Diplomacy*, September 2017, available at <https://www.armscontrol.org>, p. 13.

On a separate track, the United States and ten allied governments created the Proliferation Security Initiative (PSI), issuing the Statement of Interdiction Principles in September 2003. Although aiming to counter WMD and missile proliferation in general, the initiative was inspired by a failed effort in December 2002 to interdict a SCUD missile shipment from North Korea to Yemen. By June 2015, PSI had 108 adherents. It is difficult to judge what impact PSI has had on the North Korean nuclear program. Many, and perhaps most, PSI interdictions are not publicized. However, we do know that PSI has had considerable success in disrupting North Korea's missile proliferation trade.<sup>257</sup> UNSCR 1874, and subsequent UNSC resolutions against North Korea, have progressively called on all states to undertake PSI-style measures against WMD and missile shipments to and from North Korea.

The fourth round of the Six-Party Talks resulted on September 19, 2005 in a Joint Statement that was reminiscent in many respects of the Agreed Framework:

- The parties reaffirmed the goal of “the verifiable denuclearization of the Korean Peninsula in a peaceful manner.”
- North Korea committed to abandoning all nuclear weapons and nuclear programs, and “returning, at an early date,” to the NPT.
- The sides reaffirmed the 1992 North-South Denuclearization Agreement.
- The U.S. affirmed that it had no nuclear weapons on the Peninsula “and has no intention to attack or invade the DPRK with nuclear or conventional weapons.”
- The United States and Japan undertook to take steps to normalize their relations with North Korea.
- The sides agreed to pursue bilateral and/or multilateral cooperation on energy, trade and investment. China, Japan, South Korea, Russia and the United States expressed willingness to provide energy assistance to the DPRK.<sup>258</sup> South Korea also reaffirmed a proposal to provide two million kilowatts of electric power to the North.
- Regarding LWRs, on which North Korea insisted, the other parties simply “agreed to discuss, at an appropriate time, the subject.”
- The “directly related parties” committed to negotiate a “permanent peace regime on the Korean Peninsula at an appropriate separate forum.”
- The parties “agreed to take coordinated steps to implement the aforementioned consensus in a phased manner in line with the principle of ‘commitment for commitment, action for action.’”<sup>259</sup>

Four days before the Joint Statement, on September 15, 2005, the United States had designated Banco Delta Asia in Macao as a “primary money laundering concern,” freezing about \$25 million in North Korean funds. Although that action did not prevent or even delay the conclusion of the Joint Statement, North Korea quickly insisted that the funds must be returned before it could be implemented.<sup>260</sup>

<sup>257</sup> See National Institute for Public Policy, *The Proliferation Security Initiative: A Model for Future International Cooperation* (Fairfax, VA; National Institute Press, August 2009), pp. 28-31.

<sup>258</sup> While not an explicit part of the Joint Statement, the energy assistance was agreed to include 50,000 MT of HFO in a first phase and the equivalent of up to one million MT of HFO in a second phase. “Before the Six Party Talks broke down in March 2009, the DPRK had received 500,000 MT of HFO and equipment and 245,110 MT of fuel-equivalent assistance.” Mark E. Manyin and Mary Beth D. Nikitin, *Foreign Assistance to North Korea*, Congressional Research Service R40095, April 2, 2014, p. 6.

<sup>259</sup> Ministry of Foreign Affairs of the People's Republic of China, *Joint Statement of the Fourth Round of the Six-Party Talks*, Beijing, 19 September 2005, available at [www.fmprc.gov.cn](http://www.fmprc.gov.cn).

<sup>260</sup> Juan Zarate, *Treasury's War: The Unleashing of a New Era of Financial Warfare* (New York: Public Affairs, 2013), pp. 225-247.

The next three and a half years witnessed a cycle of escalating North Korean provocations and U.S. concessions. On July 4, 2006 U.S. time (a date hardly chosen at random!), Pyongyang launched seven ballistic missiles in rapid succession; the UNSC responded with its first sanctions resolution. This, and all subsequent UNSC resolutions on North Korea, demanded that it return to, and comply with, the NPT, and end all ballistic missile programs. The subsequent resolutions also called for an end to North Korean nuclear programs. The North ignored all of them.

October 2006 saw the first North Korea nuclear test, and a UNSC resolution with substantially stronger sanctions. Still, the United States and its partners chose to put new emphasis on negotiations. In February 2007, the Six-Party Talks agreed on initial steps to implement the Joint Statement, including a North Korean commitment to declare all of its nuclear programs and disable its nuclear facilities in return for an additional 950,000 tons of HFO or its equivalent.<sup>261</sup> The United States agreed to help provide the energy aid, to remove North Korea from the state sponsors of terrorism list, and to stop the application of the Trading with the Enemy Act toward North Korea. All of those commitments were essentially repeated in an October 2007 Six-Party statement.<sup>262</sup>

In a further major concession, the United States agreed in March 2007 to allow North Korea to retrieve the \$25 million in frozen Banco Delta Asia funds. The United States announced that those would be transferred to a North Korean Foreign Trade Bank account at the Bank of China, and that North Korea had pledged “that these funds will be used solely for the betterment of the North Korean people, including for humanitarian and educational purposes.”<sup>263</sup> There is no record of any U.S. or other verification of the actual use of those funds. When the funds were transferred in June 2007, according to the then- Deputy Assistant Secretary of the Treasury for Terrorist Financing and Financial Crimes, “[t]he price for North Korea’s return to the six-party talks had been paid in full.”<sup>264</sup>

However, that price was still not enough for North Korea to comply with the Six-Party agreements. Limited dismantlement activities at the Yongbyon reactor were ongoing under U.S. and IAEA monitoring, but North Korea still resisted a full and accurate disclosure of its nuclear activities. In January 2008, it finally submitted a declaration on those activities, but it was very incomplete. In response, the United States continued making concessions, in hopes of finally winning North Korean compliance. In June 2008, the United States accepted an important limitation to the North Korean declaration, agreeing that it could delay declaring any discussion of uranium enrichment.<sup>265</sup> The United States also removed North Korea from the Trading with the Enemy Act, informed Congress it would do the same with the state sponsors of terrorism list, and signed into law an ability to waive Glenn Amendment sanctions on North Korea.<sup>266</sup>

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<sup>261</sup> Ministry of Foreign Affairs of the People’s Republic of China, *Initial Actions for the Implementation of the Joint Statement*, Beijing, February 13, 2007, available at [www.fmprc.gov.cn](http://www.fmprc.gov.cn).

<sup>262</sup> Ministry of Foreign Affairs of the People’s Republic of China, *Second Phase Actions for the Implementation of the Joint Statement*, Beijing, October 3, 2007, available at [www.fmprc.gov.cn](http://www.fmprc.gov.cn).

<sup>263</sup> U.S. Department of the Treasury, “Statement by DAS Glaser on the Disposition of DPRK-Related Funds Frozen at Banco Delta Asia,” March 19, 2007, available at <https://www.treasury.gov>.

<sup>264</sup> Zarate, *op. cit.*, p. 264.

<sup>265</sup> Hill, *op. cit.*, Chapter 19.

<sup>266</sup> The import of those actions was mainly political – further U.S. steps toward legitimizing or normalizing relations with North Korea. The 1917 Trading with the Enemy Act gave the President the power to oversee or restrict trade with enemy nations in time of war. Countries designated by the Secretary of State as State Sponsors of Terrorism are subjected to sanctions under the Arms Export Control Act, the Export Administration Act and the Foreign Assistance Act. The 1994 Glenn Amendment requires sanctions on

The revised declaration that North Korea submitted in June 2008 was much fuller than its predecessor regarding plutonium production, but in keeping with its agreement with the United States, silent on uranium enrichment.<sup>267</sup> Nevertheless, North Korea steadfastly refused the verification protocol that the United States deemed necessary. The Six-Party Talks collapsed over the issue, convening for the last time in November 2008.<sup>268</sup>

On April 5, 2009, North Korea conducted a failed satellite launch, which the UNSC condemned a week later. One day after the UNSC action, on April 14, North Korea declared that it would no longer participate in the Six-Party Talks or be bound by any of its agreements, and expelled IAEA and U.S. inspectors from the Yongbyon nuclear complex.<sup>269</sup> One month later, Pyongyang conducted its second nuclear test.

Bilateral talks by the Obama Administration in 2009 aimed at restarting the Six-Party process came to nothing.<sup>270</sup> Nuclear-related international obligations on North Korea were thereafter imposed by successive, increasingly strong, UNSC sanctions resolutions, in response to both long-range missile launches and to the third, fourth and fifth nuclear tests in February 2013, January 2016 and September 2016. International compliance with those resolutions severed most North Korean external economic dealings; the most important exception was China.<sup>271</sup> Supported by China and the black market, and willing to subject its population to severe hardship, North Korea consistently violated all provisions of the UNSC resolutions.

New, far more troubling developments occurred in Summer 2017. In July, North Korea tested two ICBMs; in September, its sixth nuclear test was the most powerful ever, and reported to be a hydrogen bomb. The UNSC imposed additional, stronger sanctions, but failed to agree on the even stricter ones proposed by the United States.

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states that have transferred nuclear reprocessing equipment or technology or detonated a nuclear explosive device. The President never executed his authority to waive Glenn Amendment sanctions for North Korea. The removal of Pyongyang from the Trading with the Enemy Act and the State Sponsors of Terrorism list did not yield in practice the economic benefits that were allowed on paper. See *Trading with the Enemy Act*, 50 USC Chapter 106, 40 STAT. 411; U.S. Department of State, Bureau of Counterterrorism and Countering Violent Extremism, *Country Reports on Terrorism 2015*, Chapter 3, available at <https://www.state.gov>; and National Committee on North Korea, *The Glenn Amendment (22 USC Sec 2799aa-1)*, available at [www.ncnk.org](http://www.ncnk.org).

<sup>267</sup> Eric Edelman and Robert Joseph report that the paper used for the declaration showed traces of enriched uranium. See Eric Edelman and Robert Joseph, "Cheney Was Right: The Sorry History of Our North Korea Policy," *The Weekly Standard*, October 9, 2017, available at [www.weeklystandard.com](http://www.weeklystandard.com).

<sup>268</sup> Hill, *idem*.

<sup>269</sup> Don Oberdorfer and Robert Carlin, *The Two Koreas: A Contemporary History*, Third Edition (New York: Basic Books, 2014), p. 432.

<sup>270</sup> See Scott Snyder, "U.S. Policy toward North Korea," *SERI Quarterly*, January 2013.

<sup>271</sup> See Anthony Ruggiero, "Severing China-North Korea Financial Links, 3<sup>rd</sup> April 2017," *Foundation for Defense of Democracy Analysis and Commentary*, available at [www.defenddemocracy.org](http://www.defenddemocracy.org); and Cha, *op. cit.*, pp. 315-345.

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## Questions

1. ***Did the character of the government committing the violation incline it toward breaching the agreement? (For example, authoritarian regimes – unaccountable, secretive, deceptive, byzantine, aggressive – may be prone to noncompliance.)***

The authoritarian nature of the North Korean regime is one of the – if not the -- greatest factor(s) explaining its repeated violations of all its nuclear agreements during (and after) the period of this case study. The nuclear ambitions of Kim Il-Sung (until his death in 1994) and his successor Kim Jong-Il (until his death in 2011) reflected the grandiosity of their ambitions and determination to retain absolute power in the face of external enemies. They could accept or violate agreements at will, unconstrained by any internal accountability. The same was true of external relations. Although the regime craved great-power status, it was quite willing to be considered a pariah state – at least as long as its financial lifeline to China remained.

The North Korean regime appeared to accept agreement obligations under one or both of two circumstances: perception of an outside threat that they might not deter; and/or expectation of benefits (in the form of tangible goods and/or of the elusive great-power respect that they craved). The decision to adhere to the NPT was made because of expected nuclear and energy benefits from the Soviet Union. The Agreed Framework resulted both from fear of U.S. military action and the offer of substantial economic, energy and status benefits. The 2005 Six-Party Joint Statement appeared to reflect primarily a desire for economic benefits and status recognition.

At no time, however, were the perceived benefits of the agreements enough to persuade North Korea to abandon or to make transparent its nuclear weapons program. It hoped to have both – the benefits of the agreement while secretly continuing its nuclear activities. For many years North Korea succeeded in that effort. Other concerned parties knew some, but by no means all, of what Pyongyang was doing in the nuclear area and where. As its nuclear programs became more (but still far from completely) overt, North Korea used those activities, and others' fear of a nuclear-armed North Korea, to win new concessions. One observer has accurately described this approach as that of a "shake-down state."<sup>272</sup> Eventually, however, most North Korean nuclear agreements foundered on monitoring and verification – measures which the other parties required and North Korea would not accept.

Further, the extreme authoritarianism of the North Korean regime enabled it to withstand economic and financial sanctions that no other country could absorb. The Soviet Union ultimately collapsed in part because of the economic costs of the Cold War. No matter what one may think of the 2015 Joint Comprehensive Plan of Action, Iran came to the negotiating table in large part because it could not tolerate the severe impact of sanctions on its society. In contrast, the North Korean regime, appeared impervious to sanctions that contributed to its people's impoverishment and starvation, as long as Chinese support and black-market access maintained the elite's lifestyle and continued progress in the nuclear and missile programs.<sup>273</sup>

Finally, the ruthlessness of all three Kim leaders effectively deterred any dissent among the elite. Although Kim Jong-Un's reign is outside the scope of this case study, he seems to have raised

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<sup>272</sup> Nicholas Eberstadt, "The Shakedown State," American Enterprise Institute, October 31, 2003, available at [www.aei.org](http://www.aei.org).

<sup>273</sup> Cha, *op. cit.*, pp. 315-345.



regime terror to levels even more horrifying than those of his father and grandfather. Under the circumstances, no North Korean official can be expected to question the wisdom of the nuclear program, and the scientists, engineers and managers working on it are compelled to give it their all.

**2. *What did the violator hope to gain? What consequences did it anticipate? No response, with the violation undetected or unpunished? Penalties that would be acceptable in light of the expected gain?***

Beyond personal glory, Kim Jong-Il also appeared to aim at deterring U.S. or South Korean attack or other effort to overthrow his regime, including through support to internal opponents. Further, he even hoped to deter United States military support to South Korea in the event of any conflict – despite the large United States military presence on the peninsula. Kim Jong-Il also did his best to deter sanctions – for example, in the military threats he made during the “first nuclear crisis.” As years went by, and sanctions increased, the regime almost certainly anticipated that more would come. Despite their bellicose rhetoric, they likely assumed sanctions could be tolerated, for several reasons.

First, sanctions that further impoverished average North Koreans were quite acceptable to the regime as long as the elites were not unduly affected.

Second, the leaders undoubtedly assumed that sanctions would ease if they insisted on relaxation as a condition of any new agreement. They had good reason for doing so. Witness, for example, the U.S. decisions to return the Banco Delta Asia funds, to remove North Korea from the state sponsors of terrorism list and Trading with the Enemy Act, and to weaken verification proposals for the 2005 Joint Statement. The United States repeatedly offered such concessions in an effort to further negotiations. Pyongyang gladly pocketed them, without changing the basic negotiating outcome in the long run. Thus, for example, the dismantlement work and on-site monitoring at Yongbyon as a result of the 2005 Joint Statement of the Six-Party Talks were hailed as major achievements – but the inspections lasted less than four years, and the dismantlement work does not appear to have greatly set back North Korea’s nuclear program.

Third, North Korea was able to count on China to skirt, or even violate, UNSC sanctions, likely in order to help prevent regime collapse. More than 90 percent of North Korea’s total trade volume is with China. The trade deficit is an indirect Chinese subsidy, of particular value to Pyongyang because United Nations sanctions prohibit North Korea from financing the regime through borrowing.<sup>274</sup>

Finally, and again with good reason, North Korea undoubtedly assumed that it could keep many elements of its nuclear program undetected as long as it wished to do so. When verification of an international agreement threatened to undermine that assumption, Pyongyang violated it. For most of the period of this case study, it could also assume that the United States and other negotiating partners would respond by seeking a compromise. Witness, for example, the IAEA demand for a special inspection, which was never repeated. There is also the case of uranium enrichment, which North Korea long denied after first admitting it – and much of the international community believed that the North had, at most, only a rudimentary program that would take years

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<sup>274</sup> Eleanor Albert and Beina Xu, “The China-North Korea Relationship,” Council on Foreign Relations, *CFR Backgrounders*, July 5, 2017, available at <https://cfr.org>.

to become operational. North Korea's ability to evade effective international scrutiny of its nuclear program allowed it to choose when to go public with core elements of that effort: the nuclear tests and tour of the enrichment facility are prime examples. At the same time, much basic information still remains unclear about North Korea's nuclear program: for example, numbers and locations of facilities, numbers of warheads produced, amount of plutonium and highly-enriched uranium.<sup>275</sup>

**3. *Had the violator accepted the agreement willingly or under duress? Was acceptance of the agreement the result of a strategic decision or was it a tactical expedient?***

North Korea willingly accepted some of its nuclear agreements: the North-South Denuclearization Agreement; the 2005 Joint Statement; and the 2007 implementation agreements. Doing so, however, did not represent a strategic decision to change course and abide by their letter and spirit. Instead, they were tactical expedients, in service of Pyongyang's strategic goals regarding its nuclear program, regime security, and desire for great power status. They also carried some other benefits until North Korea's violations became too great to ignore. For example, North Korea received large amounts of HFO under both the Agreed Framework and the 2005 Joint Statement – until those agreements collapsed under the weight of North Korean violations and intransigence.

Two other agreements appeared to have been accepted under pressure, although duress might be too strong a word. Thus North Korea joined the NPT at Soviet insistence as a condition of providing two power reactors. Although we cannot say with certainty why North Korea accepted the Agreed Framework, it seems more than coincidental that it did so at a time when U.S. military action appeared to be a real possibility. Each of those agreements was long-lived by North Korean standards, but only because Pyongyang was able to hide fundamental violations that went to the agreements' core. Thus, North Korea remained an NPT member for just over 17 years, while it steadfastly conducted a nuclear weapons program. The Agreed Framework lasted for eight years, even as North Korea pursued uranium enrichment in violation of one of its core provisions. The agreements that required subsequent agreement on monitoring or verification measures beyond IAEA safeguards – the 1992 Denuclearization Agreement and the 2005 Joint Statement -- collapsed more quickly.

Finally, the IAEA and UNSC resolutions on North Korea are not agreements, but obligations imposed upon the country to abandon all nuclear (as well as ballistic missile) weapons and proliferation efforts. North Korea has ignored them. The compliance of many states with the UNSC prohibitions on trade and financial transactions with North Korea, along with PSI and other counterproliferation efforts, have stymied many of the country's nuclear and missile proliferation activities, and complicated its weapons programs. However, they have by no means prevented North Korea's nuclear progress.

**4. *Were there aspects of the agreement that increased the likelihood of violations? Were there deficiencies in verification capabilities that the violator was able to exploit?***

North Korea systematically refused to accept effective verification of its nuclear activities. While a few facilities were subject to IAEA and/or U.S. monitoring from time to time, those did not cover all of Pyongyang's nuclear facilities or activities. Most overt North Korean violations of its nuclear

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<sup>275</sup> David Albright and Christina Walrond, "Challenges Posed by North Korea's Weapon-Grade Uranium and Weapon-Grade Plutonium: Current and Projected Stocks," *38 North*, October 24, 2012, available at [www.38north.org](http://www.38north.org).

agreements concerned verification measures. The even more important substantive violations of nuclear weapons development, uranium enrichment and plutonium reprocessing were not publicly, unambiguously obvious until North Korea made them so.

Some of North Korea's nuclear agreements – the NPT, the Denuclearization Agreement, and the 2005 Joint Statement – called for subsequent agreement on verification measures. North Korea's first overt violation of a nuclear accord was its refusal to complete an IAEA Safeguards Agreement within the required time. The Denuclearization Agreement provided that North and South Korea would agree on locations and activities to be inspected; they never did so. The 2005 Joint Statement included limited IAEA inspections, but North Korea refused to agree on more intrusive and extensive monitoring and verification measures.

Other North Korean nuclear agreements – IAEA Safeguards and the Agreed Framework – included monitoring measures, but those were limited and not very effective, especially with a regime that was determined and able to maintain secrecy regarding almost all of its activities, not just nuclear. North Korea adhered (eventually) to the minimally-required Safeguards Agreement, but it appears never to have considered accepting the strengthened measures of the Additional Protocol.<sup>276</sup> Moreover, North Korea violated even the limited safeguards to which it was subject, filing false declarations, denying access to an unknown number of relevant nuclear facilities, and refusing a mandatory special inspection.

During the period that IAEA and U.S. inspectors had access to the declared North Korean facilities at Yongbyon, they could confirm the presence or absence of required or prohibited activities there. However, they could not monitor what they could not see. National intelligence means helped somewhat, but had great limitations, especially given the probability that many facilities were located deep underground. North Korea's success in concealing its uranium enrichment is a prime example. While the U.S. Government had good reason to believe that Pyongyang was enriching uranium, the evidence was sufficiently ambiguous that even U.S. officials did not believe that the effort was very far advanced. The ambiguity disappeared only when North Korea chose to make it indisputable – not just by showing a facility, but by showing it to a world-class expert who would definitely know what he was seeing. One of the many problems facing the international community is that we do not know if or how many other clandestine facilities exist and where.

Finally, the UNSC resolutions on North Korea contain no verification measures at all. Most states have abided by their obligations to implement the UNSC sanctions, but there is no enforcement mechanism to compel those who wish to violate or circumvent them. China is the primary state of concern in this regard.

In short, there were indeed many “deficiencies in verification capabilities that the violator was able to exploit.”

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<sup>276</sup> The IAEA developed the Additional Protocol after the 1991 Gulf War demonstrated the inadequacy of regular safeguards in uncovering the Iraqi nuclear weapons program. Unlike the Safeguards Agreement, adherence to the Additional Protocol is voluntary for NPT non-nuclear weapon states parties.

**5. Were the proscribed capabilities easy or hard to conceal? Could they be clandestinely obtained from third parties?**

The uniquely closed nature of the North Korean regime and nation, combined with its mountainous topography and the weaknesses of the verification measures to which it was subject, made it very easy for Pyongyang to conceal most of its proscribed capabilities and activities. During much of the time period of this case study, North Korea also maintained foreign front companies, as well as illicit banking and smuggling networks, to help procure needed equipment and technology, as well as to help finance its nuclear program. The progressively stronger UNSC economic and financial sanctions have forced the shutdown of many of those, but by no means all.<sup>277</sup>

There is evidence of nuclear cooperation in the past between North Korea and the A.Q. Khan network. Khan most likely had a major role in helping to advance the North's uranium enrichment program. It is unclear whether Khan's dealings with North Korea were part of a "package deal" with Pakistan, including nuclear and missile cooperation.<sup>278</sup> There has also been considerable, well-documented ballistic missile cooperation between North Korea and Iran dating to the 1990s. Many observers believe that cooperation expanded to nuclear weapons technology, especially after North Korea's first nuclear test in 2006.<sup>279</sup> Further, North Korea was deeply involved in the design and construction of the graphite-moderated reactor in Syria which Israel destroyed in 2007. In 2012, North Korea concluded a scientific cooperation agreement with Iran that reportedly closely resembled the one it had had with Syria.<sup>280</sup> The Director of National Intelligence has not confirmed any North Korean nuclear cooperation with Iran, but has noted that the North "provided assistance to Syria's covert nuclear effort starting in the late 1990s and retains the potential for exporting nuclear materials or technology."<sup>281</sup>

**6. When detected, was the violation blatant or plausibly ambiguous? Were its consequences seen as serious or relatively unimportant?**

The numerous North Korean verification violations were unambiguous, but many interlocutors did not consider them as very serious. For example, when North Korea first submitted a false declaration to the IAEA in 1992, the international response was muted until North Korea escalated the dispute by refusing a mandatory special inspection and submitting notice of intent to withdraw from the NPT. That, and subsequent North Korean provocations, set in motion the process that led to the Agreed Framework.

North Korea's pursuit of nuclear weapons and fissile material production was always extremely serious and became more blatant over time. However, many aspects of it remained – and still remain – ambiguous. For example, when did it develop a workable device? How many weapons has it produced? How much plutonium and highly-enriched uranium has it produced? Views of North Korean uranium enrichment demonstrate that at least sometimes the judgment of whether

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<sup>277</sup> Zarate, op. cit., Part III.

<sup>278</sup> See, for example, David Albright, *Peddling Peril: How the Secret Nuclear Trade Arms America's Enemies* (New York: Free Press, 2010), Chapter 7.

<sup>279</sup> See Samuel Ramani, "The Iran-North Korea Connection," *The Diplomat*, April 20, 2016.

<sup>280</sup> James Woolsey, "Breaking the Iran, North Korea and Syria Nexus," Joint Hearing before the House Committee on Foreign Affairs, 11<sup>th</sup> April 2013, available at <https://foreignaffairs.house.gov>.

<sup>281</sup> Director of National Intelligence, op. cit., p. 8.

a violation is blatant or plausibly ambiguous depends on the observer. Views differed even more on whether the uranium enrichment program was serious enough to terminate the Agreed Framework.<sup>282</sup>

**7. Was the response to the violation undertaken by one or multiple parties? Were there differences within the government, or within and among the governments, responding to the violation? Were there differing assessments of the violation and possible responses? If so, what were the effects of these differences? If the response was unilateral in nature, was this a source of strength or weakness? If a number of states were involved, what were the advantages or disadvantages of a multilateral response?**

Global responses to the violations were undertaken by the IAEA and eventually the UNSC. UN sanctions strengthened progressively over time, in response to repeated North Korean violations of the resolutions' prohibitions on nuclear and ballistic missile activity. Another important multilateral, albeit unofficial, response was the creation of PSI in September 2003. While directed against all WMD proliferation, not just North Korea, PSI has had an important role in preventing proliferation shipments to and from Pyongyang. Publicly reported interdictions against North Korean proliferation have mostly concerned missile shipments; the record against nuclear proliferation is unknown.

The United States also imposed many national sanctions against North Korea. By themselves, these had little impact, because there had never been any significant economic or financial relations between the two countries. Thus, multilateral sanctions were essential. Over time, international compliance with UNSC resolutions increased as North Korea's nuclear and ballistic missile threats grew. China remained a central exception.

For much of the reporting period, U.S. Government officials differed among themselves on whether to pursue sanctions and/or concessions vis-à-vis North Korea. That dynamic was observed in the run-up to the Agreed Framework, during the first North Korean nuclear crisis.<sup>283</sup> It may have been even more striking in the years between the 2005 Joint Statement and the end of the George W. Bush Administration. Some officials, who ultimately prevailed, insisted that the United States should make a series of concessions to induce North Korea to accept additional measures to verify the Joint Statement. As discussed above, those included the return of the Banco Delta Asia funds, the removal of North Korea from the state sponsors of terrorism list and the Trading with the Enemy Act, and the ability to waive Glenn Amendment sanctions. Concessions also extended to weakening the U.S.-proposed verification measures. Many U.S. officials maintained that those moves were necessary to win North Korean agreement.<sup>284</sup> Even if it was true that they were necessary, they were certainly not sufficient. The negotiations and the Joint Statement collapsed with no progress on verification. The opponents of serial concessions to North Korea had been proven right.

The structure of negotiations with North Korea was itself a response to violations. The Agreed Framework and the negotiations leading up to it were bilateral, but its implementation required

<sup>282</sup> See, for example, Obderdorfer, *op. cit.*, Chapters 6-7, and Mike Chinoy, *Meltdown: The Inside Story of the North Korean Nuclear Crisis* (New York: St. Martin's Press, 2009), Chapters 7-8.

<sup>283</sup> See Wit, Poneman, Gallucci, *op. cit.*, *passim*.

<sup>284</sup> See Hill, *idem.*, Pritchard, *op. cit.*, and Condoleezza Rice, *No Higher Honor: A Memoir of My Years in Washington* (New York: Random House, 2011). For a different view, especially regarding the Banco Delta Asia funds, see Zarate, *op. cit.*, pp. 225-266.

considerable international involvement. South Korea and Japan contributed the overwhelming majority of funds for the LWR project, and IAEA inspectors were responsible for much of the monitoring. Moreover, this bilateral agreement required compliance with accords that involved other states: the NPT, IAEA Safeguards Agreement, and the North-South Denuclearization Agreement. The Bush Administration rejected the bilateral focus of the Clinton Administration, insisting that the North Korean nuclear and missile threat was a regional issue that required the involvement of North Korea's neighbors – China, Russia, Japan, and South Korea. The evolution of the United States' relations with Japan and South Korea, along with the steady growth in the threat posed by the North, may also have made it impractical to expect another agreement like the Agreed Framework that the United States would negotiate but its allies largely implement. The Six-Party format required that all concerned participants approve any agreement from the beginning.

Further, the United States expected that the involvement of regional states, especially China, would greatly increase the pressure on North Korea to accept the Bush Administration aim of “comprehensive, verifiable, irreversible dismantlement” of Pyongyang's nuclear program. The conclusion of the 2005 Joint Statement may have appeared initially to vindicate that hope, but problems arose immediately. On the flip side, the U.S. government might also have hoped that the Six-Party framework would help insulate it from international criticism for failure to reach and sustain agreement with North Korea – the kind of criticism that attended the breakdown of the Agreed Framework.

In any event, the choice of bilateral or multilateral negotiations probably had little impact on the outcome in the long run, because North Korea was determined to continue and advance its nuclear program, which neither the United States nor the other participants in the Six Party Talks could accept.<sup>285</sup>

**8. *What types of responses to the violation were considered or adopted? Inaction? Accommodation? Negotiation of a revised or new agreement? Diplomatic pressure? Retaliatory break of another arms control constraint? Economic sanctions? Military improvements, threats or action? How effective were those that were pursued?***

In keeping with the *Groundhog Day* analogy, the United States and other states adopted a range of responses to North Korean violations. The Agreed Framework appeared to result from a combination of diplomatic pressure, the threat of military action, and political and economic inducements. When North Korea (temporarily) admitted it was enriching uranium, the United States proposed – and the KEDO Executive Board agreed – to suspend HFO deliveries under the agreement in retaliation for the violation. One year later, KEDO suspended work on the LWR project, finally cancelling it in 2006.

In response to the KEDO action, North Korea expelled IAEA inspectors and announced its immediate withdrawal from the NPT. Rather than retaliate, the United States and its partners chose to resume negotiations, this time in the form of the Six-Party Talks. The short-term result was the Joint Statement, which had many of the inducements of the Agreed Framework. When North Korea balked at required monitoring measures, the United States offered repeated political and economic inducements and compromises on verification requirements – even in the wake of

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<sup>285</sup> Cha, *op. cit.*, pp. 257-260.

North Korea's first nuclear test. With no progress, and repeated North Korean provocations, efforts in the Obama Administration to revive the Six-Party Talks came to nothing.<sup>286</sup>

**9. If the response involved inducements as well as penalties, is there evidence suggesting that the combination was more effective than either alternative alone?**

The UNSC resolutions and national sanctions offered penalties. The diplomatic process and the resulting agreements offered inducements in exchange for North Korean assurances regarding its nuclear activities and acceptance of some verification. It is difficult to judge which approach was more effective, because none thus far has dissuaded North Korea from continued pursuit of nuclear weapons and long-range delivery system. However, the economic inducements of the Agreed Framework and 2005 Joint Statement cost the United States, Japan and South Korea a few billion dollars, and provided significant economic benefits to North Korea. More important, the U.S. pattern of new concessions in response to ever more serious North Korean violations almost certainly fueled expectations in Pyongyang that it had little to fear from continued defiance. While no negotiations and inducement offers have been seen since the time period of this case study, North Korea might still think that the United States and others will come around eventually, accepting it as a nuclear-armed state.

**10. What tools and tactics were available to the violator to inhibit, fend off, or withstand a response? Which were chosen and why? What was their effectiveness?**

There were four main tools available to North Korea to inhibit and/or withstand punitive responses to its violations. First was the authoritarian nature of the society, which allowed the leadership to accept devastating economic damage to most of the population as long as the elite was comfortable. Second, and closely related, was the closed nature of the regime and the country, which made it difficult for other states to charge clear violations like the uranium enrichment program until the North chose to make them obvious. Third was China's overriding fear of North Korean collapse. Since the time period of this case study, China has become increasingly antagonized by Kim Jong-Un and his repeated, escalating provocations.<sup>287</sup> However, it was still doing what it could to maintain his rule, probably because it viewed the alternative as much worse. Finally, the United States and South Korea did not see any palatable military options – even leaving aside Chinese involvement. In the run-up to the Agreed Framework in 1993-1994, U.S. policymakers feared that any military action would have devastating consequences. That conclusion applied *a fortiori* after Pyongyang acquired nuclear weapons. It is too early to judge as of this writing what impact the 2017 North Korean ICBM and nuclear tests will have on the last two factors.

Violations of some arms control agreements may be facilitated by ambiguities in their provisions. That is generally not the case with the North Korean agreements addressed in this report. For example, the requirements for NPT parties to foreswear nuclear weapons and to conclude an IAEA Safeguards Agreement within 18 months of NPT adherence are very clear. The same is true of the obligation to accept an IAEA special inspection. There is no ambiguity in the commitment under the North-South Denuclearization Agreement, and therefore the Agreed Framework, not to pursue plutonium reprocessing or uranium enrichment.

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<sup>286</sup> Cha, *ibid.*, pp. 295-297.

<sup>287</sup> See Albert and Xu, *idem.*

The closest thing to ambiguity in the North Korean agreements was the implementation delay featured in the North-South Denuclearization Agreement and the 2005 Joint Statement. The first called for subsequent agreement on inspections; the second for “coordinated steps to implement” the agreement “in a phased manner.” North Korea’s refusal to agree on verification measures for either agreement certainly qualified as negotiation in bad faith and taking advantage of lacunae in the agreements, but was not the result of ambiguity in their provisions *per se*.

**11. Were there important asymmetries in the stakes and resolve between the violator and the enforcer that had a significant influence on the outcome of the case?**

There were important asymmetries in the resolve of North Korea on the one hand, and the United States, China, Russia, and even Japan and South Korea on the other. Kim Jong-Il was prepared to pay virtually any price for his nuclear program.<sup>288</sup> It is possible that he might have abandoned their nuclear efforts if confronted with a serious risk of U.S. military attack or withdrawal of Chinese support for the regime. However, the proposition that either or both of those conditions might lead North Korea to abandon its nuclear weapons program – and to do so verifiably – has never been fully tested. The danger of some U.S. military action in 1993-1994 appeared to bring Pyongyang to the Agreed Framework and to a verifiable freeze of its declared nuclear program, but not to end its clandestine nuclear activities. Moreover, the United States abandoned the military options it was considering in 1993-1994 as soon as the Agreed Framework was concluded.

That suggests another important asymmetry between the United States, Japan and South Korea on the one hand and North Korea on the other. The United States and its allies consider international agreements to be solemn obligations, and expect their opposite numbers to do the same. The important formulation by President Reagan, “trust, but verify,” underscores that the United States has approached international arms control agreements with an emphasis on verification certainly, but also with an underlying assumption of trust. North Korea consistently took advantage of that assumption, which it undoubtedly saw as both naïve and an opportunity.

Many United States officials and observers also valued agreements for agreements’ sake. Thus they greeted the Agreed Framework as a major victory, and many strongly questioned the seriousness of its violations of the accord. Some refused to accept that North Korea was engaged in anything more than a rudimentary uranium enrichment effort, until the regime publicly flaunted the program. They tended to condemn the United States, not North Korea, for violating the accord when KEDO suspended HFO fuel oil deliveries.<sup>289</sup>

Paradoxical though it may seem, the asymmetry between what the United States and its allies were willing to do to end North Korea’s nuclear programs and what North Korea was prepared to do to retain and advance them may have steadily grown during the period of this case study as the North Korean nuclear threat increased. U.S. military options that were deemed too risky in 1993-1994 may have seemed potentially catastrophic after North Korea’s nuclear weapons tests. The George W. Bush Administration responded to the first North Korean nuclear test and long-range missile launches with sanctions and words of condemnation, but also with negotiating

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<sup>288</sup> Cha, *op. cit.*, pp. 298-305.

<sup>289</sup> See, for example, Oberdorfer, *idem.*, and Mike Chinoy, *idem.*



compromises and concessions. Contrary to experience, U.S. policy toward North Korea, especially in the Bush Administration's second term until near its end, reflected continued faith – or hope – that the next agreement would be unlike all the others. That changed early in the Obama Administration, when the United States refused negotiations unless and until Pyongyang's policy changed. Both approaches resulted in the same unsuccessful outcomes.

***12. On the whole, why did deterrence of the violation fail? Why did efforts to restore compliance succeed or fail?***

Several overlapping factors were behind the failure to deter the multiple North Korean violations of its arms control agreements and UNSC resolutions, as well as the failure to restore compliance. They are summarized here, in no particular order of priority.

First was the authoritarian, clandestine nature of the North Korean regime. The grandiose pretensions of the leadership fueled its nuclear ambitions. Totalitarian rule allowed it to subject its citizens to severe economic and financial hardship without fear of weakening its hold on them, and to maintain an iron grip on information. The extreme clandestine nature of the regime, combined with forbidding topography, greatly facilitated its ability to hide violations, or at a minimum to make them ambiguous. In short, North Korea – far more than most, even authoritarian, governments – could get away with violations, and knew it.

Next was the combination of: the asymmetry in the resolve between North Korea and those states and international institutions that worked to punish its violations and restore compliance; during the period of this case study and the continued support of China. Only two developments might have persuaded North Korea that the costs of noncompliance outweighed the benefits. One would have been a credible U.S. military threat to maintain and/or restore compliance. The other would be a withdrawal of Chinese support.

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## Chapter Six: Lessons Learned and Strategies for the Future

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This chapter will first provide summary answers to the questions addressed in the preceding case studies. On that basis, it will identify recurrent patterns in noncompliance and response. Finally, it will recommend strategies for the future, designed to improve the ability to prevent noncompliance with arms control agreements, to respond effectively to violations, and to resolve them satisfactorily.

### Questions

- 1. Did the character of the government committing the violation incline it toward breaching the agreement? (For example, authoritarian regimes --unaccountable, secretive, deceptive, byzantine, aggressive – may be prone to noncompliance.)***

The four case studies clearly suggest that authoritarian regimes are more prone to noncompliance than others. This poses particular problems for U.S. arms control efforts, because the United States and its allies have often been most anxious to conclude agreements with authoritarian regimes that they find particularly threatening.

Saddam Hussein, Kim Jong-Il and Hitler were completely unaccountable domestically and determined to terminate – or simply ignore – all external constraints on their ambitions. While their aims were similar, their success varied depending on the environments they faced. Hitler was able to act as he wished until September 1939, especially because of British and French reluctance to confront him militarily. Until 2009, Kim Jong-Il occasionally chose to appear to cooperate – while violating agreements clandestinely – in order to win as many concessions as possible, primarily from the United States. From time to time Saddam Hussein was forced to come into compliance with some obligations – for example, regarding his nuclear programs after the Kamel defection. In those instances, he seemed to do the minimum possible in order to achieve his goals of an end to sanctions and a subsequent reemergence of WMD and longer-range missile programs. A great irony is that the secretive, authoritarian nature of the regime enabled Saddam Hussein to keep the secret – the paucity of his WMD holdings by 2003 – whose nondisclosure brought about his downfall.

The political leaders of the democratic Weimar Republic did not at all resemble Saddam Hussein, Kim Jong-Il or Hitler. However, the military retained the authoritarian characteristics of its imperial predecessor and was determined to evade the Versailles constraints. While it is unclear how much the early Weimar political leaders knew about the military's noncompliance, they shared a common nationalism and opposition to the Treaty. At the same time, the relative weakness of the Weimar Government forced it to comply at least to some extent on those occasions when the Allies discovered violations and took strong stands against them.

The Soviet governments responsible for the Krasnoyarsk radar differed among themselves. On one side were the traditional *apparatchik* regimes of Brezhnev, Andropov and Chernenko. While not particularly aggressive, they were definitely “unaccountable, secretive, deceptive, byzantine.” Moreover, they tended to defer to the military's stated requirements. It is difficult to imagine any

senior officials under those three General Secretaries objecting to a military proposal on the grounds of arms control treaty obligations. Gorbachev's approach was quite different. There is no evidence that his government had any greater respect for international law, but it wanted improved relations with the United States more than it wanted to retain the Krasnoyarsk radar. The Gorbachev Government also aimed to curb military spending, and its *glasnost* policy made it increasingly difficult to pursue clandestine arms control violations.

Authoritarian regimes have little patience with arms control constraints on their preferred actions, and do not face an unruly democratic process in their effort to pursue violations. That does not necessarily mean that democratic regimes assuredly will comply with arms control agreements. As the Versailles case study demonstrates, respect for the rule of law is more important than democracy *per se* in inclining a government strongly to comply with arms control agreements. Although democratic governments tend to have respect for the rule of law, that is not inevitable – with consequent potential adverse results for compliance.

**2. *What did the violator hope to gain? What consequences did it anticipate? No response, with the violation undetected or unpunished? Penalties that would be acceptable in light of the expected gain?***

In at least three, and perhaps all, of the four cases, the violator apparently sought to create a basis for eventual complete freedom from the relevant arms control constraints – whether through breakout, withdrawal or mutual agreement of the parties. Thus, the Weimar Republic military (and perhaps political) leadership, and Hitler during his first two years in power, worked to provide a base for a resurgent military once the Versailles provisions were lifted. The Weimar Government seemed to hope that the Allies would accept an end – or at least drastic changes – to the Treaty. In 1935, Hitler simply acted unilaterally.

Saddam Hussein also hoped to revive his WMD and longer-range missile programs once the Gulf War sanctions were lifted. Lifting sanctions would require only simple changes to UNSC resolutions. Moreover, France, Russia and China showed considerable sympathy by the late 1990s for lifting sanctions. The UNSC did not go nearly that far, but agreed to progressive weakening of sanctions through the Oil-for-Food program.

Kim Il-Sung and Kim Jong-Il continued their nuclear and ballistic missile programs throughout the period of this report's case study, apparently little constrained by the successive arms control agreements they concluded. Instead, the Agreed Framework provided significant economic benefits even as the North Koreans pursued their clandestine violations. They almost certainly expected the same from the 2005 Joint Statement, but were stymied by the demands of the other parties for at least some verification. As a result, they chose their nuclear and ballistic missile programs over the political and economic benefits of the agreement. By 2009, Pyongyang ceased any effort at using arms control as a cover for its nuclear and missile programs. North Korea has not even pretended to comply with any of the UNSC resolutions against it – instead flaunting its increasing, and increasingly threatening, violations.

The Krasnoyarsk radar case might, or might not, differ from the other three regarding the fundamental aim(s) of the violation. It would differ from the other three if the Soviet/Russian explanation – that the location was chosen for financial and convenience reasons – is true. On the other hand, the Krasnoyarsk violation would resemble the other three if the underlying motive

was to create the foundation for a territorial defense. The actual motives may have been a combination of the two.

In three of the four cases – Versailles, Iraq and North Korea – the violators believed that their clandestine noncompliance would not be detected. To a considerable extent, their expectations were borne out. The Weimar Republic and Saddam Hussein sought to satisfy enforcers' demands to the minimum extent necessary when violations were detected. Both became more cooperative when faced with the threat or reality of military action, but neither completely came into compliance. In contrast, North Korea responded to detection with defiance, and was rewarded with new concessions by the United States and its partners. Particularly as "enforcement fatigue" grew through the 1920s and early 1930s, the Weimar Republic and then the Nazi regime could expect that discovered violations would not be severely punished. Saddam Hussein may have made a similar gamble in the period leading up to the Second Gulf War. His gamble did not pay off. Germany's gamble did pay off, until September 1939. We do not yet know the eventual outcome for North Korea.

Here as well, the Krasnoyarsk case differs from the others. The Soviets assumed the United States would quickly discover the early stages of the radar's construction. However, they also expected that the United States would consider it a minor technical violation, and accept its existence and operation. They were wrong on both counts. Many observers argue that the Soviet Union was not prepared for the firmness of the Reagan Administration on compliance issues. While that may be true, it is unlikely that the Carter Administration could have readily accepted the Krasnoyarsk violation in light of the domestic controversy over ratification of SALT II, even if the radar had been detected before the Soviet invasion of Afghanistan.

**3. *Had the violator accepted the agreement willingly or under duress? Was acceptance of the agreement the result of a strategic decision or was it a tactical expedient?***

The Weimar Republic was forced to accept the Treaty of Versailles; that was a necessary tactical expedient. The same was true of Iraq. UNSCR 687, which included the core disarmament obligations, required Iraq's acceptance for the cease-fire to be formalized. Neither government ever considered its disarmament obligations to be legitimate, and focused on creating the foundations for their termination.

In contrast, the Soviet Union was a full, willing participant in the ABM Treaty. It appears to have done so both as a tactical expedient and strategic decision, seeing it as a means to constrain the U.S. Safeguard program and to free resources for its offensive missile program. There is no evidence that it considered construction of the LPAR at Krasnoyarsk until some years after Treaty signature.

North Korea was pressured by the Soviet Union to join the NPT, but willingly agreed over time to the IAEA Safeguards Agreement, the North-South Denuclearization Agreement, the Agreed Framework and the 2005 Joint Statement. In all of those instances, it did so strictly as a tactical expedient – a convenient means to stave off political, economic and possibly even military costs, while gaining economic and political benefits and maintaining clandestine nuclear programs. The UNSC Resolutions passed from 2006 on have all been imposed on Pyongyang, and all have been ignored.

**4. Were there aspects of the agreement that increased the likelihood of violations? Were there deficiencies in verification capabilities that the violator could exploit?**

The likelihood of violations was extremely high in three of the four cases, above all because the violators never accepted the agreements except on paper and believed that there was at least some room available for noncompliance. The Versailles Treaty and UNSC Resolutions were imposed on Germany and Iraq, respectively. Each believed those obligations to be illegitimate. North Korea entered freely into its denuclearization agreements, but had no intention of complying with them. The fourth case – the Krasnoyarsk radar – may be an exception. The Soviet Union was a willing party to the ABM Treaty and saw much to gain from it because of the resulting limits on U.S. BMD and increased availability of resources for its offensive forces. However, it readily violated the Treaty when it found its provisions inconvenient and/or it chose to create the basis for a territorial defense.

Some features of agreements studied here also contributed to violations. For example, the very depth and breadth of the Versailles disarmament provisions made them impossible to monitor fully. The fact that Iraqi missiles under 150 km range were unconstrained helped Iraq to maintain a base that could be used later to develop and produce longer-range missiles. The lack of ABM Treaty constraints on LPARs for purposes other than early warning or ABM led at least some Russians to believe that they might succeed in convincing the United States that the Krasnoyarsk radar was for space tracking.

The four cases vary regarding verification capabilities. The inspection teams of the Versailles IACCs were too small to monitor compliance thoroughly and were hampered by the German liaison committee. Although they had unlimited access in principle, their inspections were continually blocked – often by the liaison officers who were supposed to assist them. When noncompliance was detected in the early 1920s, the most powerful Allied means to induce an end to – or at least reduction in – the violations was the threat of new or continued military occupations. After the last occupying troops were withdrawn in 1926, and the IACCs dissolved a year later, Allies were left only with their rather limited national intelligence capabilities.

The ABM Treaty provided for no verification other than NTM. Yet the addition of on-site measures would not have helped the United States to detect the Krasnoyarsk radar; only NTM could do that. On-site inspections would have helped to judge any internal conversion progress, but NTM (and now commercial satellites) have been adequate to confirm that the site is essentially destroyed.

On paper, UNSCOM and the IAEA had unlimited power to monitor Iraq's WMD and prohibited missile programs and ensure their termination. In practice, however, they – like the Versailles IACCs – were continually stymied by Iraqi obstructionism, and as time went on, by differences among the UNSC members. Charles Duelfer, former Deputy Executive Chairman of UNSCOM, argued that an important additional factor was the lack of an occupying force, and therefore inability to threaten military action against violations.<sup>290</sup> Iraq did not significantly increase its openness and cooperation until the threat of military invasion loomed in November 2002; even then, it was far from fully transparent.

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<sup>290</sup> Duelfer, *Hide and Seek: The Search for Truth in Iraq*, op. cit., p. 156.

Finally, North Korea systematically refused to accept effective verification of its nuclear program. While a few facilities were subject to IAEA and/or U.S. monitoring from time to time, those did not cover all of Pyongyang's nuclear facilities or activities. Most overt North Korean violations of its nuclear agreements concerned monitoring measures. The existence or extent of violations involving nuclear weapons development, uranium enrichment and plutonium reprocessing ceased to be debated outside North Korea only after Pyongyang chose to disclose them. Finally, the UNSC Resolutions against North Korea beginning in 2006 have included no verification measures at all.

**5. *Were the proscribed capabilities easy or hard to conceal? Could they be clandestinely obtained from third parties?***

In three of the four cases, many violations were relatively easy to conceal, although for different reasons. The extent of the Versailles provisions and strong, widespread German obstructionism made it virtually impossible to gather complete, accurate information; small arms holdings are a prime example. Further, proscribed capabilities could be developed under civilian cover; thus, "commercial aircraft" production was important for the later *Luftwaffe*. Finally, the Treaty did not prohibit German arms development and production abroad – a loophole that the Weimar Republic exploited fully.

In the Iraq case, it was ironically not so much the proscribed chemical, biological and missile capabilities that were easy to conceal, as the fact that most had been destroyed. By repeatedly filing false declarations and hiding the extent of its unilateral weapons destruction – which violated its UNSC Resolution obligations – Iraq left UNSCOM and UNMOVIC unable to conclude that Iraq retained only a very few prohibited chemical, biological and missile capabilities. Nuclear was different. Iraq worked to conceal its nuclear capabilities and plans until the Kemal defection in 1995. After that, it was largely forthcoming, leaving the IAEA with only a few outstanding questions by early 2003.

A "foreign national" – identified unofficially as A.Q. Khan – offered nuclear assistance to Iraq in October 1990, but there is no evidence that Iraq accepted the offer. The ISG found considerably more evidence of clandestine Iraqi procurement and technical assistance for its missile programs, especially from North Korea, Russia and Syria.

The uniquely closed nature of the North Korean regime and nation, combined with its mountainous topography and the weaknesses of the verification measures to which it was subject, made it easy to conceal its nuclear holdings, facilities and activities – until it chose to reveal them. There is also evidence of clandestine North Korean cooperation with A.Q. Khan. Some observers believe that Pyongyang's ballistic missile work with Iran extended to nuclear issues, especially after its first nuclear test in 2006.

Once again, the Krasnoyarsk case differs from the other three. The huge radar complex should have been extremely difficult to conceal from NTM shortly after construction began. Certainly the Soviet Government expected that the United States would quickly discover the violation. The United States has never explained why it failed to do so until some years after construction start.

**6. When detected, was the violation blatant or plausibly ambiguous? Were its consequences seen as serious or relatively unimportant?**

For the Versailles case study, the Weimar Republic violations were often ambiguous, and viewed by the British as unimportant. The French, on the other hand, saw every shortcoming as serious. Few observers understood the strategic purpose behind the Weimar violations and circumventions of the Treaty: to lay a basis for a re-emergent German military and nation. In contrast, Hitler's 1935 disavowal of the Versailles disarmament provisions was as blatant as possible. The Allies agreed that his action was very serious, but responded with appeasement – setting in motion a cycle that was not broken until September 1939.

The Krasnoyarsk violation was blatant, in its illegal location and orientation for a BMEW radar. The U.S. Executive Branch also found it unambiguous that the radar had a battle management purpose, and that it violated the Treaty as soon as construction started. Many Congressional and outside observers, however, disagreed with those two findings. Those who believed that the radar was not for battle management and/or would not violate the Treaty until it began operating tended to view the violation as less serious than the Reagan and Bush Administrations did. Observers' views of the seriousness of the Krasnoyarsk violation also varied according to whether they agreed with the United States Government that it was part of a pattern of Soviet arms control noncompliance.

Some Iraqi violations were blatant. Those included noncompliance with its obligations to provide “full, final and complete” declarations of its WMD and prohibited missile programs, and to allow unrestricted access to inspectors of facilities, personnel and documentation. The same was true of its illegal unilateral destruction of WMD and related materials and equipment. The most important question, however, remained unanswered until after the Second Gulf War: whether Iraq retained significant quantities of, and capabilities for, WMD and prohibited missiles. Well before the war, UNSC permanent members disagreed on the significance of Iraq's violations and outstanding issues. Russia, China and France were ready to move on, and to lift many – or even all – of the remaining sanctions. For the United States and United Kingdom, in stark contrast, the belief that Iraq retained substantial quantities of WMD and related programs was reason to go to war.

North Korea's verification violations were unambiguous, but many interlocutors did not consider them as very serious. In contrast, North Korea's pursuit of nuclear weapons and fissile material production was always extremely serious and became more blatant over time. Still, many aspects of it remained – and still remain – unknown.

**7. Was the response to the violation undertaken by one or multiple parties? Were there differences within the government, or within and among the governments, responding to the violation? Were there differing assessments of the violation and possible responses? If so, what were the effects of these differences? If the response was unilateral in nature, was this a source of strength or weakness? If a number of states were involved, what were the advantages or disadvantages of a multilateral response?**

Of the four case studies, only the ABM Treaty was bilateral. The United States Government remained firm and united in demanding dismantlement of the Krasnoyarsk radar. Nevertheless, United States Government agencies tended to differ on how to respond to the violation. The main

U.S. response was to abandon the interim restraint policy, an action opposed by the State Department, but advocated by the Defense Department and ACDA. State and Defense also differed on whether to declare the Soviet Union in material breach of the Treaty and on how much emphasis to put on the territorial defense issue. The final White House responses tended to be compromises between State and Defense.

Although there were many parties to the Versailles Treaty, the United States was not among them because of the Senate refusal to give advice and consent to ratification. That left the United Kingdom and France as the major powers to monitor the Treaty's disarmament clauses and respond to violations. As discussed above, the two often disagreed about the importance of the violations and the appropriate response. During the Weimar Republic, they were most effective in inducing compliance on the few occasions when they acted together, especially in threatening or continuing military occupation. After 1935, Britain and France tended more frequently to take a common approach to German violations, but it was one of appeasement.

The response to Iraq's violations was centered in the UNSC, composed of five permanent members and 10 non-permanent for two-year terms. Over the period of this case study, 59 states held nonpermanent seats. The large number of participants undermined the inspection and elimination process. Unity of purpose was not possible to sustain. The United States and United Kingdom insisted on complete Iraqi compliance with UNSCR 687 before sanctions could be lifted – although they accepted the weakening of sanctions involved in the Oil-for-Food program. France and Russia, in contrast, wanted sanctions to be lifted gradually, in exchange for what they saw as significant, if incomplete, compliance with its disarmament obligations.

International responses to North Korea's nuclear violations were undertaken first by the IAEA and eventually the UNSC. UNSC sanctions strengthened over time, as North Korea repeatedly violated the resolutions. International compliance with the resolutions also strengthened; China was an important exception. For much of the period of this case study, United States Government agencies differed within and among themselves on whether to emphasize sanctions or concessions vis-à-vis North Korea. That dynamic was observed in the run-up to the Agreed Framework, and was most striking in the years between the 2005 Joint Statement and the end of the George W. Bush Administration. The Bush Administration insistence on multilateral rather than bilateral negotiations with Pyongyang was itself a response to the failure of the Agreed Framework. Nevertheless, the Six-Party Talks were no more successful in inducing North Korea compliance than the bilateral Agreed Framework had been or the UNSC resolutions would prove to be later.

***8. What types of responses to the violation were considered or adopted? Inaction? Accommodation? Negotiation of a revised or new agreement? Diplomatic pressure? Retaliatory breach of another arms control constraint? Economic sanctions? Military improvements, threats, or action? How effective were those that were pursued?***

The main responses to the Weimar Republic violations of the Versailles Treaty disarmament provisions were either inaction or actual or threatened military occupation. Economic sanctions were not seriously considered. In the 1930s, inaction and accommodation became the primary responses. In 1935, the British and French proposed to Germany a new treaty providing for equal force limits, which would have totally overturned the Versailles disarmament provisions. Hitler did not respond to the proposal.



The principal Reagan Administration responses to Soviet arms control noncompliance (including, but not limited to, the Krasnoyarsk radar) were: abandonment of the interim restraint policy; and maintenance of strategic modernization and SDI programs. Economic sanctions were apparently not considered. Diplomatically, the Reagan Administration linked the completion of new arms control agreements to resolution of compliance concerns, but relaxed that policy when convenient. The most effective response may simply have been the constant diplomatic pressure at the highest levels.

The main responses to Iraq's violations included the sustainment of economic sanctions, the continuation and strengthening of inspections, and the threat to use military force. The use of military force in 1998 resulted in less Iraqi cooperation, and thus proved counterproductive. However, the threat in November 2002 of much greater military force inspired Iraq to increased – if still incomplete – compliance.

For most of the period of the North Korea case study, the United States and its partners adopted a range of responses to Pyongyang's violations. A combination of diplomatic pressure, the threat of military action, and political and economic inducements led to the Agreed Framework. After the collapse of that agreement and North Korea's withdrawal from the NPT, the United States imposed some sanctions, but also chose to resume negotiations in the form of the Six-Party Talks. When North Korea balked at required monitoring, the United States offered repeated political and economic inducements and verification compromises – all to no avail. By 2009, the only significant responses to North Korea's persistent nuclear and missile provocations came from the UNSC, which imposed progressively stricter economic and financial sanctions on the country.

***9. If the response involved inducements as well as penalties, is there evidence suggesting that the combination was more effective than either alternative alone?***

All four case studies involved, to varying degrees, inducements as well as penalties. However, in the only successful case – the Krasnoyarsk radar – the United States response lacked tailored inducements or penalties. The abandonment of interim restraint was only loosely linked to Krasnoyarsk. The most important factor was probably the general promise of a more productive relationship with the West if the issue was resolved—which was Gorbachev's goal.

In the Versailles case, the most effective penalty was the threat to maintain or undertake military occupation, but it was used sparingly. The first noticeable inducement was the Locarno Treaty; however, the Allies never seriously sought to link its conclusion to German compliance. The British and French response to violations in the 1930s consisted of accommodations and inducements, without any penalties.

In the Iraq case, UNSC economic sanctions were the core penalty; the promise to lift them in exchange for full compliance was the intended inducement. As years passed, important states like Russia, China and France became increasingly supportive of lifting sanctions. While most sanctions still were retained, some were lifted in the Oil-for-Food program. In 1998, the United States and United Kingdom turned to military action to punish Iraqi noncompliance, but it was ineffective for that purpose. The Iraqis reacted more positively to the threat of much greater military force in November 2002, but their reaction was too little, too late.

Progressively stronger economic, financial and political sanctions were levied against North Korea by the United States and (beginning in 2006) the UNSC. However, the United States also promised or provided inducements aimed at North Korean acceptance of verifiable denuclearization. Those included the benefits in the Agreed Framework and 2005 Joint Statement, and the removal of the Pyongyang from the State Sponsors of Terrorism List. Inducements ceased after the collapse of the Six-Party Talks, but the outcome remained the same: continued North Korean defiance and major progress in its nuclear and ballistic missile programs.

**10. What tools and tactics were available to the violator to inhibit, fend off, or withstand a response? Which were chosen and why? What was their effectiveness?**

The Weimar Republic used a combination of secrecy, circumvention, evasion and obstruction of inspections to fend off a response. When the government felt forced, it complied to the minimum necessary to avoid or curtail military occupation. Hitler also relied on secrecy to inhibit Allied response, but for a contrary purpose; instead of understating his military power, he overstated it. The bluff worked.

Because the Krasnoyarsk radar could not be hidden, the Soviets at first lied about its purpose. When that failed, they tried a series of negotiated fallbacks, most involving linkage with the U.S. LPARs at Thule and Fylingdales. Ultimately, they admitted the violation and effectively destroyed the radar.

The Iraqi case in many ways resembles the German. Iraq also extensively used secrecy and obstruction to avoid compliance, while still hoping for relief from penalties. Initially the penalties were economic sanctions; in 2002, the greatest threat was military force. As with the Nazi regime, Saddam Hussein's secrecy also gave the impression that he had more military capabilities than was the case. Unlike the Germans, Iraq also offered economic incentives to some UNSC members – especially Russia, France and China – to encourage them to lift economic sanctions.

The authoritarian nature of the Nazi, Iraqi and pre-Gorbachev Soviet governments all made it easier for them to maintain secrecy about their noncompliance. The extreme totalitarianism of North Korea enabled it to go much further, ignoring its arms control obligations despite devastating economic damage from sanctions. The closed nature of the regime, and the weakness (and frequent absence) of monitoring also made it difficult for other states to confirm violations until Pyongyang revealed them. A final critical factor was China's unwillingness to enforce sanctions strictly, lest the regime collapse.

**11. Were there important asymmetries in the stakes and resolve between the violator and the enforcer(s) that had a significant influence on the outcome of the case?**

In the Versailles case, Germany had a powerful stake in eventually overturning the Treaty and restoring what it saw as its rightful status as a great power. Until the mid-1920s, France had at least as strong a stake in preventing Germany from achieving its ambitions. Great Britain's main aim at that time was to restore stability on the continent, making it sympathetic to some of the German goals. After the Locarno Treaty, France came closer to the more relaxed British attitude toward compliance. That developed into appeasement after Hitler's disavowal of the Versailles disarmament provisions.

The stakes and resolve of the Soviet Union and the United States for much of the Krasnoyarsk case were strikingly symmetrical: the former was determined to retain the radar, and the latter to see it dismantled. The violation ended when U.S. resolve proved longer-lasting than that of the Soviets. The change in Soviet policy might not have happened without the Gorbachev Government, which placed a high value on a more productive relationship with the West. It is doubtful that any of Gorbachev's predecessors would have chosen improved relations with the United States over the radar.

Saddam Hussein had an overriding stake in the survival of his regime and ability to deter regional adversaries, especially Iran. Few UNSC members had equally strong stakes in Iraqi compliance with the UNSC arms control obligations. The exceptions were the United States and United Kingdom, which were willing to go to war at least in part because of Iraq's apparent retention of chemical and biological weapons and missiles of 150 km range or greater. Saddam Hussein almost certainly greatly miscalculated the strength of the two countries' resolve.

It is difficult to imagine more determination than that demonstrated by the Kims in their pursuit of nuclear weapons and delivery capabilities. No price exacted during the period of this case study was sufficient to deter them from these programs, which the regime viewed as essential to its survival. While the United States, Japan, South Korea, and the international community had a strong stake in an end to the North's nuclear threat, they could not define effective and acceptable options for achieving that outcome. Much may depend on China, which demonstrated an overriding stake in avoiding regime collapse in Pyongyang and peninsula reunification under a government allied with the United States.

### ***12. On the whole, why did deterrence of the violation fail? Why did efforts to restore compliance succeed or fail?***

In none of the four cases were the violations deterred. All of the violators expected, at least initially, that the benefits would outweigh the costs. Germany, Iraq and North Korea all believed that they could avoid detection, and that the responses would not be unduly severe if the violations were discovered. Germany was ultimately severely punished, but for its territorial aggression rather than its Versailles violations. Only Iraq eventually paid a severe price for its violations, even though those ironically did not include retention of large WMD capabilities. Unlike the other three, the Soviet Union expected that its violation would be quickly discovered, but that the United States would view it as a technical issue and allow it to continue.

The Krasnoyarsk case is also the only one of the four where efforts to restore compliance – or at least efforts short of war – succeeded. Two factors were primarily responsible for that positive, and rare, outcome. Most important was the firmness with which the United States held, year after year, to its position that the radar must be dismantled. The Soviets kept pressing, with one proposal after another, but the United States would not yield. The second factor was the coming to power of Mikhail Gorbachev, who placed high priority on relations with the United States, on constraining the Soviet military, and on *perestroika* and *glasnost*. Despite all of those features, however, the Gorbachev Government tried for over four years to retain the Krasnoyarsk radar.

The difference in stakes among the main states concerned appears to have been the primary reason that compliance enforcement failed in Germany. During the Weimar period, only the threat

of military occupation had much effect in inducing compliance. Still, Great Britain probably was correct in fearing that long-term occupation would destabilize Germany. Moreover, neither Britain nor France had an interest in continuing occupation past 1926. After Hitler came to power, early military action might have been effective, at least in demilitarizing the Rhineland. Nevertheless, subsequent history suggests that nothing short of all-out conflict could deal with Hitler's territorial ambitions over the long term – if he remained in power.

In Iraq, differences in stakes among major parties also were major factors in the failure of compliance enforcement. As time passed, important states like Russia, China and France encouraged Saddam Hussein to believe that sanctions might be lifted – or at least substantially weakened – despite continued noncompliance. These same states argued that false declarations, obstruction of inspections, and occasional discovery of small amounts of WMD and other prohibited items were not major violations requiring retention of full sanctions – let alone enforcement by military force. Another essential factor was that Iraq largely met the central obligation of the UNSC resolutions – the elimination of WMD, prohibited ballistic missiles and component materials – in secret. The outcome probably would have been substantially different if Iraq had disclosed, and opened to inspection, its chemical, biological and missile activities, including unilateral destruction, to the same extent as it disclosed its nuclear program. Finally, the strange history of Iraq's deceptions and obstruction from 1991 to 2003 would not have been possible without the authoritarian regime and nature of Saddam Hussein.

North Korea's regime was even more authoritarian, able to continue its violations despite the severe economic impact on the population. It also was free from outside inspections, except for the limited, on-and-off IAEA presence until April 2009. Asymmetries in the parties' resolve were also critical. The Kims saw their nuclear weapons program as critical to their regime's survival. Only one or both of two developments – each posing greater risks to their survival -- might have persuaded them to come into compliance: a credible, major U.S. military threat, and/or a withdrawal of Chinese support. As of the end of this case study in 2009, North Korea did not have to confront that choice.

## **Patterns of Noncompliance and Response**

The preceding chapters, and the summary answers above to the twelve core questions of this report, demonstrate that each case study addressed in this report is unique. At the same time, they have enough commonalities that patterns of noncompliance and response may be identified. Those patterns are discussed below. The final section of this chapter offers suggested strategies for the future, based on the patterns illuminated by the case studies.

First, authoritarian regimes are more prone to noncompliance than democratic governments. They have little if any respect for the rule of law, are secretive, and unaccountable to anyone but themselves. They have absolute power over the government and population, and brook no dissent.

Next, governments are more likely to violate agreements that they are forced to accept. The Weimar Republic was democratic, but never accepted the legitimacy of the Versailles Treaty. Political leaders were either sympathetic to the military's determination to evade Treaty constraints, or too weak to resist in the light of popular support for the military.

Difficult though it may be to admit, countries that are thoroughly defeated in war may be more prepared to accept victors' demands than others. The likelihood of Iraqi compliance with the transparency obligations of the UNSC resolutions after the First Gulf War was low from the start, when Saddam Hussein remained in power. While Germany had a new, democratic government after World War I, the country had not been invaded, its infrastructure was intact, and much of its military leadership was still in place. As a result, the military leadership and a large proportion of the population refused to admit that Germany had been defeated or that Versailles was legitimate. Contrast West Germany after World War II, which readily accepted disarmament, Allied occupation, and the 1948 Basic Law (essentially the constitution), drafted at Allied insistence and heavily influenced by U.S. officials.

Asymmetries in stakes and resolve among the parties may be the most critical determinants of noncompliance. In three of the four cases analyzed in this report, the violator's stake in noncompliance generally was far greater than the enforcer's stake in compliance.<sup>291</sup> Germany in the 1920s wanted to restore national greatness. Saddam Hussein and Kim Jong-Il believed their regimes were at stake, and sought (temporary) compromise only when they were threatened militarily. On the other hand, Britain and France were simply tired of Versailles compliance enforcement by 1927, several UNSC members wanted after a few years to return to normal (and economically beneficial) relations with Iraq, and the United States moved from threats to inducements after the signature of the Agreed Framework. In the fourth case, the dynamics were quite different. The Reagan and George H.W. Bush Administration's stake in demanding compliance with arms control agreements was initially just as strong as the Soviet Union's stake in retaining the Krasnoyarsk radar. Ultimately, U.S. resolve proved longer-lasting – although the Soviet Union might have remained more resistant if it were not for the change to the Gorbachev Government.

Three of the four cases demonstrate that where compliance is elusive – as with authoritarian regimes or those who accepted the agreement under duress – the most effective inducement may be the threat of military action, whether occupation or attack. Only in the Iraqi case, however, did two of the main parties, the United States and United Kingdom, follow through with actual invasion. While that certainly resolved the compliance issues, the price was enormous.

It may be stating the obvious, but compliance is generally easier to enforce for bilateral than multilateral agreements. The only successful case studied in this report is also the only purely bilateral one. U.S. Allies were skeptical about the seriousness of the Krasnoyarsk violation. If they had been parties to the ABM Treaty, it is extremely doubtful that they would have demanded – without wavering for over six years – that the radar be dismantled.

While the Versailles Treaty had many parties, only the United Kingdom and France were important to enforcement of the disarmament provisions. They were close allies, and few in number, yet in the 1920s, they disagreed more often than not on compliance issues – differences that the Weimar Government was able to exploit. During the next decade, they tended more to be in agreement with each other, but in favor of inaction and appeasement.

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<sup>291</sup> Iraq is only a partial exception to this finding. By invading Iraq in 2003, the United States, United Kingdom, Australia and Poland demonstrated a demonstration to restore compliance that was at least the equal of Saddam Hussein's commitment to noncompliance. However, the bulk of UN members opposed that action.

The UNSC Resolutions on Iraq involved many states. Of the permanent UNSC members, only the United States and United Kingdom remained firm in demanding complete Iraqi compliance. There were also differences in this regard among the inspecting bodies. UNSCOM's last Executive Chairman stressed noncompliance; so too, albeit to a lesser degree, did the UNMOVIC Executive Chairman. The IAEA Director General emphasized compliance. It is difficult to know whether those differences resulted from differing views of how strictly to enforce the UNSC Resolutions, from Iraq's greater transparency on nuclear programs after Kamel's defection, or from a combination of the two.

North Korea's nuclear obligations were a hybrid, but primarily multilateral. The NPT, IAEA Safeguards Agreement and UNSC Resolutions involve most states in the world. The Agreed Framework was bilateral, but South Korea and Japan were critical to its implementation. The Six-Party Talks were obviously multilateral, but the United States led in both demands and concessions. The North Korean case fully demonstrates that a bilateral, or clearly U.S.-led, agreement by no means guarantees either compliance or a firm response to noncompliance.

Finally, deterring the violation of arms control agreements by a determined violator is difficult – and perhaps nearly impossible. One might argue that the case studies in this report are a skewed sample in this regard, because they all involve noncompliance. However, arms control agreements over the past 100-plus years that were never violated are rare indeed. The demilitarization of Germany and Japan were exceptions, but in both cases, the leadership and the population embraced that outcome only after the catastrophe of the Second World War. In addition, the Obama Administration continuously certified that Russia was in compliance with the New START Treaty, but also noted ongoing (i.e., not yet resolved) discussions with Russia on implementation issues.<sup>292</sup>

Fear of detection and response had some deterrent effect in the Weimar and Iraqi cases, but that was by no means complete. When discovered, the violators sought to appease the enforcers through partial compliance. The same was true of North Korea, although its compliance concessions were even more limited than those of Iraq or Weimar Germany. Finally, expectation of detection did not deter the Soviets from building the Krasnoyarsk radar; they simply assumed an acceptable response given their expectations of U.S. behavior.

Colin Gray's "arms control paradox" may well be at work: "Arms control regimes worthy of the name are achievable only between states who do not need them. ... The motive to cooperate is overridden by the motive to compete. The arms control paradox argues that the reasons why states may require the moderating influence of an arms control regime are the very reasons why such a regime will be unattainable."<sup>293</sup>

## Strategies for the Future

The patterns of noncompliance and response observed in the four case studies analyzed in this report amply underscore the difficulty of securing compliance with arms control agreements. In no case were violations deterred or otherwise prevented. In only one was the violation resolved

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<sup>292</sup> Department of State, *Annual Report on Implementation of the New START Treaty*, January 2017, pp. 2-3, available at <https://www.state.gov>.

<sup>293</sup> Colin S. Gray, *House of Cards: Why Arms Control Must Fail* (Ithaca, NY: Cornell University Press, 1992), p. 27.

peacefully. In a second, violations were resolved – and full information discovered – only as a result of war. In a third, they have yet to be resolved. And in the fourth, the unresolved violations significantly contributed to the outbreak of World War II.

Following are recommendations for approaches to future arms control agreements, based on the patterns of noncompliance and response found in this study.

**First, determine the national interest to be served by the proposed agreement.** It is tempting to conclude that the best way to avoid noncompliance with arms control agreements or with obligations imposed by UNSC resolutions is not to enter into them. Sometimes that will be an option. For example, it is questionable whether the United States derived significant national security benefits from the Interim Agreement, SALT II or the ABM Treaty. The military benefits, if any, were small; the political benefits of *detente* were dramatically reduced after the invasion of Afghanistan and Soviet violations of the agreements. In other instances, the agreement is in the national interest. That was certainly true at the time of the INF Treaty signature; it is open to debate whether that remains the case, given Russian noncompliance. In still other cases, the agreement may be necessary, especially to resolve or end a conflict peacefully.

Therefore, the first element of a strategy to secure compliance with arms control agreements must be a clear-headed analysis of whether the agreement serves the national interest. If it does not, the effort should not be pursued given the challenges and potential costs of noncompliance—no matter how politically popular it might be.

**Develop effective monitoring and verification provisions.** If a potential agreement passes the first test, the next task would be to prepare for noncompliance. Some agreements may not lend themselves to verification and will inevitably be violated, but might still be valuable for setting international norms. The Biological Weapons Convention is a good example. For most agreements, however, the Reagan Administration maxim of “trust but verify” should be amended, in light of the case studies covered here, to “verify but still don’t trust.” The party entering the agreement should carefully develop the monitoring, verification and prospective enforcement measures required to deter and detect any cheating, no matter how unlikely it might appear at the time. As an example, the INF Treaty is of indefinite duration. All U.S. and Soviet ground-based INF missiles were to be destroyed within three years of Treaty entry into force, and verification provisions were to continue for another ten years. At the time, ten years seemed adequate or better. That was shown not to be the case when the Russian violation was announced 15 years after INF verification ended.

In devising verification measures, a party should not assume that they can be weakened because of improved relations with the other party. The dramatic changes in U.S. relations with Russia – for the better and then the much worse – since the fall of the Soviet Union demonstrate how foolhardy that can be.

On-site monitoring may not be possible for some arms control instruments with adversaries, such as the UNSC resolutions on North Korea since 2006. In those cases, every effort should be made to ensure that the resolution empowers member states to enforce its provisions, consistent with international law. For example, the September 2017 resolution passed after the sixth North

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Korean nuclear test strengthens earlier UNSC provisions encouraging all states to interdict ships carrying cargo suspected of violating the resolution.<sup>294</sup>

**Understand the determination and motives of the potential violator.** The experiences with the Versailles Treaty and the Iraq cease-fire resolution demonstrate that it is particularly difficult to ensure compliance by a party that is forced to accept a post-war agreement, but has not been destroyed in the war. This is not to argue that war aims should always include destruction and regime overthrow, but that the compliance implications should be carefully considered – at a minimum before concluding the conflict, and in devising the peace settlement or armistice arrangements. The threat of military occupation was the most effective sanction in Germany for the short term, but may have fueled anti-Versailles resentment over the longer term. Charles Duelfer argues that the UNSC’s inability to make military threats against Iraq seriously weakened the inspection system. Yet the Iraqi case study in this report found that Operation Desert Fox, the 1998 military operation by the United States and United Kingdom in response to Iraqi obstructionism, was counterproductive. Perhaps the most effective approach would be to require armed military escorts for post-conflict inspectors, with authorization to use force if required. As a last resort, national rights to use force to compel compliance should be recognized.

**Understand the costs and benefits of multilateral versus bilateral agreements.** The case studies in this report also demonstrate that it is more difficult to secure compliance with multilateral agreements than with bilateral. In some instances, such as the Iraq cease-fire resolution and the UNSC resolutions on North Korea, there is no alternative to multilateral approaches. In others such as the Six-Party Talks, a multilateral agreement might be preferable, in order to involve all of the states required to enforce compliance. If a multilateral agreement is either preferable or necessary, compliance enforcement might be improved with carefully-developed rules for inspectors’ rights, responsibilities and decision procedures. If international commissions analogous to UNSCOM, UNMOVIC and the IAEA’s INVO are created to carry out monitoring, their leadership should be chosen carefully for expertise and dedication, not to satisfy political *desiderata* such as national representation. A new “lessons learned” look at UNSCOM, UNMOVIC and INVO might be in order.

**Identify in advance likely violations and potential responses.** Further, the United States must consider, and decide to the extent possible, what violations might be most likely and what it would do if they occur. Such an effort might be both technically and politically difficult. For example, when the ABM Treaty was signed, an illegal BMEW radar was thought to be very unlikely because of the expected near-certainty of detection. Politically, a government might be reluctant to let it be known that it is preparing to respond to arms control cheating. Yet that would send an essential deterrent message to a potential violator. Moreover, given the noncompliance record so far, the United States Executive Branch might be compelled to undertake such advance planning before the Senate would give advice and consent to ratification of a new arms control agreement. Identification of likely violations and preferred responses would be especially difficult for multilateral agreements. Still, the UNSC provisions on interdiction are a start.

Moreover, the United States must be clear from the outset that it will respond decisively to arms control violations. If and when it does so, it must not establish red lines that it is not prepared to honor. Messages of intent to respond must be clear and credible to be effective.

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<sup>294</sup> UNSC, *Resolution 2375(2017)*, op. cit.



## Summary

In sum, the first U.S. goal should be to avoid arms control agreements that do not serve the national interest. If agreements are pursued, essential goals should be to establish the ability to deter noncompliance by the other party (or parties), to undertake effective responses to violations, and to enhance the chances of their successful resolution. An important vehicle to assist that effort would be to create an arms control “Red Team,” similar to – but with a broader focus than – one established by the Reagan Administration in 1982.<sup>295</sup> It is important to note that the Reagan Red Team was established fairly early in the START and INF negotiations; the one recommended here would begin even earlier, with critical input into the decisions as to whether and how to pursue negotiations in the first place.

No foolproof strategy seems likely to deter, or to respond effectively to, all arms control cheating. However, we can seek to enter a new era of better securing compliance. Thirty years ago, the INF Treaty brought revolutionary change to verification. It is past time for another dramatic, positive change.

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<sup>295</sup> In 1982, a new National Security Council Arms Control Verification Committee was tasked with creating “a permanent ‘Red Team’ to challenge US verification capabilities, assumptions and policies. This team would anticipate how, in what ways, and for what purposes the Soviets might try to avoid compliance with the provisions of arms control agreements.” The White House, *National Security Decision Directive 65: Establishment of National Security Council Verification Committee*, November 10, 1982, declassified/released on May 17, 1991, p. 3, available at <https://reaganlibrary.archives.gov>, p. 3.