Verification, Compliance, and Compliance Enforcement

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Thank you, Mr. Chairman. I am pleased to see a distinguished colleague from our important friend and neighbor to the south presiding over this Committee. I would like to thank you and this body for the opportunity to share U.S. views on verification, compliance, and compliance enforcement.

Verification, compliance and enforcement are closely related. Together they are keys to our collective ability to achieve the security benefits we all seek from arms control, nonproliferation, and disarmament agreements. Unfortunately, however, these elements – and the relationships among them – are not always well understood. Today I would like to share with you some of our thinking about the importance of these elements and the ways they interact.

The U.S. View of Verification, Compliance Assessment, and Compliance Enforcement

Verification, compliance assessment, and compliance enforcement are the three components of a policy process wherein information about a state’s actions is weighed against its obligations and commitments, and if it is determined that the state is not fulfilling its obligations and commitments, steps are identified and taken to induce or enforce compliance.

The first step of this process is to assess the extent to which an agreement can actually be verified. This step is undertaken in the United States before we enter into negotiations for a new agreement, during its negotiation as changes to the agreement are considered, and after an agreement has been concluded.

The second step in this process is an assessment of the noncompliance of parties to the agreement, once the agreement has entered into force.

The final step in this process is compliance enforcement: the determination of what can or must be done to bring a party that is judged to have violated its obligations back into compliance or otherwise respond to that party’s noncompliance. It includes the implementation of that determination.

Many consider these factors – verification, compliance, and enforcement – as separate and separable activities. However, like a 3-legged stool, one or two legs are not enough to stand; they are interdependent.

How Do We Reach Noncompliance Judgments?

There has been much discussion in many international fora about whether or not certain nations have violated their international obligations. There has been less discussion of the process by which nations reach their compliance judgments, and the methodologies they employ. But, if we are to understand each other and work together to retain the benefits of our agreements, it is important that we understand the process by which each of us has reached the conclusions that we have
Let me, therefore, take this discussion to a new plane and discuss the U.S. process of reaching noncompliance judgments. It is a process established in U.S. law and for which the U.S. Congress established specific institutions.

Initial indications of a potential problem of noncompliance can come from a broad array of information, including an intelligence report, information from an international organization or a diplomat, or even revelations of a private citizen that flag an activity as a concern. We always use whatever information we can get even if it is not "technical." I also believe that all nations have or could have sources of valid or validateable information. I therefore, urge that we use the term "National Means and Methods" when referring to information collected by nations from all sources. This term better describe the information sources than the term National Technical Means of Verification. While all information, whatever its source, warrants evaluation, information that can be independently confirmed is considered to be the strongest information, especially when it can be confirmed from multiple sources.

When the information available to us suggests that there may be a compliance question, one of the first steps we take is to look at the international agreement or other commitment in question to see what States Parties are obligated to do.

International agreements and other commitments are made up of words, and it is always important – and sometimes decisive – clearly to establish what the precise obligation is in the case under review. While the review of obligations and commitments is underway, we seek all possible additional information regarding the activities of concern. Multiple sources of information are especially important when the matter is grave.

If an issue was contained in a previous U.S. compliance assessment and has been discussed with the party in question, we will also closely examine that party's statements to determine if they resolve our concerns or can help narrow the range of outstanding questions.

Ultimately, we weigh the best available evidence regarding the actions and activities of a country against our understanding of that country’s obligations to form our compliance assessments, and finally reach a finding. In cases where the information is not sufficient to reach a firm finding of violation, we will "caveat" it by explicitly noting uncertainties or ambiguities in the evidence. Whenever we can, we distinguish between inadvertent violations and deliberate ones, because this distinction can have an important bearing on what action will need to be taken in order to rectify the problem. We also endeavor to communicate the degree of seriousness of a violation, and to identify the steps that might be needed to bring the party back into compliance, or to respond in other ways that satisfy the concern.

Let me underscore, making a determination as to when another state is in violation with its international obligations is not a simple matter. The process is time-consuming, rigorous and systematic. However, as a State Party to arms control, nonproliferation and disarmament agreements and commitments, we rest our safety and security in part upon other countries’ compliance with those agreements and commitments. Therefore, the compliance assessment process is, for us, a necessary early warning call to action.

When Is Verification Effective?

The compliance process that I have just described not only informs our judgments as to whether we are facing noncompliance that requires a response; it also informs our judgments as to whether future treaties are effectively verifiable.

Determining the extent to which an agreement can be verified necessarily involves a number of variables, both technical and contextual, that vary from one proposed agreement to the next – and which sometimes hinge upon specific nuances of phrasing or the nature of the constrained activities.
I am often asked if the U.S. demands "perfect" verification. The answer is, of course, NO. There is no such thing as perfect verification. The term "effectively verifiable" does not, and should not be taken, to mean that there is, or can ever be, certainty that a violation will be detected. This phrase indicates the aspiration to achieve reasonable confidence — under the circumstances — that detection of noncompliance will occur in time for appropriate responses to be undertaken.

The U.S. considers an arrangement or treaty to be effectively verifiable if the degree of verifiability is judged sufficient given the compliance history of the parties involved, the risks associated with noncompliance, the difficulty of response to deny violators the benefits of their violations, the language and measures incorporated into the agreement and our own national means and methods of verification. The degree of verifiability must be high enough to enable the United States to detect noncompliance in sufficient time either to have the violation reversed or, particularly in the case of intentional noncompliance, to reduce the threat presented by the violation and to deny the violator the benefits of his wrongdoing.

Let me emphasize one point. We see the challenge of making verifiability and compliance assessments at a national as well as an international level. International organizations and mechanisms can provide useful and essential input to nations for their consideration in making these assessments. They can provide useful fora for sharing other information, for sharing judgments and for deliberating response options. But, international organizations are not parties to agreements. States are parties to agreements.

It is a common misperception that a combination of international data declarations, international cooperative measures (including technical measures) and on-site inspection regimes all by themselves will be sufficient for detecting noncompliance. In fact, data declarations, cooperative measures and on-site inspections can provide useful and often invaluable information. They are useful tools for investigating indications of non-compliance — as we've seen the IAEA do to great effect in Iran, for example — and they are useful tools for detecting inadvertent violations. However, inspections provide information according to the agreed access and collection capabilities negotiated by the parties, and only provide such information as is available at the specific time and place of the inspection. Even cooperative measures, such as remote cameras and seals for continuous monitoring — while quite powerful — are limited to the locations where they are employed.

Some agreements provide for challenge or suspect site inspections in an effort to address these challenges. However, the inspectors still must know where to look. And, if they find the right place to look, there must be some means of determining whether the activities at that location are permitted or prohibited. On-site measures that cannot make a significant contribution to verification may only build a false sense of security.

To increase the likelihood that noncompliance — especially undeclared activities at undeclared locations -- will be detected, one must be able to draw on all sources of information, both national and international. National means and methods of verification are thus necessarily a critical part of every approach to verification.

After Detection — What?

In January 1961, in an article in Foreign Affairs, Dr. Fred C. Ikle, a former Director of the U.S. Arms Control and Disarmament Agency, grappled with the issue of compliance in a seminal article that you all might find as fascinating as I have. That article was entitled "After Detection ... What?" In the article, Dr. Ikle made the critical point that detecting violations is not enough. What really counts is to ensure that there are sufficient consequences to a violation once it has been detected. Dr. Ikle pointed out that these consequences alone will determine whether or not the violator stands to gain in the end. His words are as true today as when he wrote them: only by making violators face consequences for their violations can they be expected to take compliance seriously, and only by making them face such consequences will other would-be violators be deterred. These consequences may be political, economic or other actions taken by international organizations or States Parties, including, ultimately military.
If arms control, nonproliferation and disarmament agreements and commitments are to support the security of all nations, then all nations must respond when confronted with noncompliance. Unilateral U.S. action to encourage compliance is not enough. Detecting a violation is not an end in itself: it is a call to action. Without strict compliance and without the concerted action of all parties to insist upon strict compliance – and to hold violators accountable for their actions – the national security of all nations will erode and global stability will be undermined.

In conclusion, let me once again thank you for the opportunity to share our perspectives on the role of verification, compliance and compliance enforcement. These principles underlie our approaches to a range of vital issues that affect international peace and security, and I am pleased to have been able to outline them for you. I look forward to discussing them further with you to develop and to improve our collective effectiveness in meeting verification and compliance challenges. We have much work to do together.

Thank you.

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