

ISSUE BRIEF

No. 3737 | SEPTEMBER 20, 2012

The Folly of the State Department's Assessment of U.S. Arms Control Compliance

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The State Department recently released its 2012 report, *Adherence to and Compliance with Arms Control, Nonproliferation, and Disarmament Agreements and Commitments*, or Annual Compliance Report. It informs Congress and the public about how the United States and other countries are fulfilling their multilateral and bilateral treaty obligations regarding arms control and nonproliferation.

Regrettably, the report is not an objective assessment of U.S. or foreign compliance with these obligations. Accordingly, it serves to undermine the legitimacy and effectiveness of the arms control process.

Policy Preferences Versus Objective Truths. The State Department wants to extend its own policy preferences to the compliance reporting process, even for America's

compliance with its treaty obligations. The Non-Proliferation Treaty (NPT) and the Chemical Weapons Convention (CWC) are two prominent examples.

A disconnect exists between the report's assertion of U.S. NPT compliance and the Administration's interpretation of the treaty's requirements. During the 2010 NPT review conference, the Administration reinterpreted the U.S.'s obligations by raising the lesser treaty provision related to negotiations on both nuclear disarmament and complete disarmament (Article VI) to equal status with the treaty's purpose of nonproliferation.

With the reinterpretation of Article VI, the Obama Administration effectively claims the U.S. violated this article in the past and came into compliance only by announcing its own disarmament policies. The report states that the U.S. was in compliance during the 2011 reporting period but not that it has always been in compliance.

The Administration does not believe the U.S. complied with Article VI in the past based on its reinterpretation. The Administration is drawn to this conclusion because it is seeking to turn the NPT into a nuclear disarmament

treaty—as opposed to a nonproliferation treaty—without amending it. If the NPT was always a nuclear disarmament treaty, the U.S. was not in compliance with Article VI because it had not proposed direct U.S. nuclear disarmament.

The State Department, however, decided not to make an explicit charge of prior U.S. noncompliance because turning the NPT into a nuclear disarmament treaty without amending it requires ambiguity. The State Department recognizes that it will be difficult to justify the reinterpretation without also charging several other state parties to the NPT with being in violation. Ultimately, ambiguity is required because the reinterpretation of Article VI is not justified either by the NPT's text or by its negotiating and implementation history.

CWC Noncompliance. While the Administration wants to artificially charge past U.S. noncompliance with the NPT, it is covering up real U.S. noncompliance with the CWC. The CWC required that the U.S. completely destroy its chemical weapons stockpile by 2007, but an extension moved the deadline to April 2012. The U.S. has not met the new deadline and cannot get another extension.

This paper, in its entirety, can be found at <http://report.heritage.org/ib3737>

Produced by the Douglas and Sarah Allison Center for Foreign Policy Studies

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The Obama Administration does not want to admit U.S. noncompliance openly because doing so would require acknowledging that the CWC was fatally flawed in at least two respects. The first regards the question of U.S. noncompliance. The second, more central flaw is that proponents persuaded the U.S. government to join the treaty by asserting that it was a global ban on chemical weapons when in reality it would not achieve disarmament.

Chemical weapons still exist in the world and in the U.S. Moreover, the U.S.—expecting the treaty to eliminate chemical weapons—is in a weak position to respond to the threat militarily because it has forgone certain options for deterring and defending against chemical weapon attacks. This is punctuated by the Syrian government’s recent statement that it possesses chemical weapons and would use them.

Regarding the matter of then-potential U.S. noncompliance, former Under Secretary of the Army and CWC opponent Amoretta Hoerber stated to members of the Senate Foreign Relations Committee on March 13, 1996, that the CWC “would put a date when the [U.S. chemical weapons destruction program] had to be completed. And that will both increase the expenses of this very expensive program—they’re now talking about \$13 billion and it’s still going up—but it will also eliminate the possibility of examining alternative technologies which in the future might be able to do the job better, cheaper and faster.”

Opponents of the CWC argued that the U.S. would likely become non-compliant. Even a January 1997 Issue Brief by the neutral Congressional Research Service (CRS) warned of this possibility and referred to Hoerber’s concern about the desire to explore other, better means for

undertaking the destruction of chemical weapons in the U.S. These warnings were ignored, and U.S. noncompliance did occur.

The honorable thing for the CWC’s proponents to do is admit their errors and recommend that the U.S. withdraw from the treaty. This admission should extend both to the false assertion that the CWC would result in chemical disarmament and to the failure to consider U.S. noncompliance. Absent this, the U.S. will compound the damage already done to its reputation for not honoring its treaty obligations.

Jeopardizing the Integrity of the Arms Control Process. The State Department needs to assess both U.S. and foreign compliance with arms control and nonproliferation treaties, as well as other agreements, on an objective basis. It also needs to restore the U.S.’s reputation for honoring its arms control and nonproliferation commitments.

Accordingly, the State Department needs to take the following actions to remedy the problems it has created by its Annual Compliance Report statements regarding U.S. compliance with the NPT and noncompliance with the CWC:

- **Revise the NPT statement to say that the U.S. has always been in compliance with Article VI of the treaty.** Additionally, the State Department needs to state clearly that the NPT is not now and never has been a nuclear disarmament treaty and that making it so will require amending the treaty. Finally, it must acknowledge that any such amendment will itself be a treaty document and subject to Senate advice and consent.
- **Announce that the U.S. will invoke the supreme interest**

clause in the CWC and withdraw from the treaty. The U.S. needs to respond effectively to the still-present chemical weapons threat. Withdrawal is permitted by Article XVI of the treaty when a state determines that extraordinary events related to the treaty have jeopardized its supreme interests. Syria’s recent declaration regarding its possession of chemical weapons and willingness to use them is an extraordinary event, as is U.S. noncompliance. Further, Syria is not a party to the CWC, so there is no treaty-based remedy to the ominous chemical weapons danger posed by its behavior.

National Security Should Be Top Priority. Apparently, the Obama Administration believes that advancing its goals for U.S. disarmament—even if doing so is at odds with actual treaty obligations—will not damage the arms control process. The Administration could not be more wrong.

Arms control is a means to an end, a way to provide national security for the U.S. The weaknesses and strengths of any arms control treaty should be assessed objectively. This is what the compliance report is supposed to achieve. The Administration has substituted its own policy preferences for objective assessments in its compliance report. The result is serious damage to the integrity of the arms control process.

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