



INSTITUTE FOR ENERGY AND ENVIRONMENTAL RESEARCH

6935 Laurel Avenue, Suite 201
Takoma Park, MD 20912

Phone: (301) 270-5500
FAX: (301) 270-3029
e-mail: ieer@ieer.org
<http://www.ieer.org>

*IEER Conference: Nuclear Dangers and the State of Security Treaties
United Nations, New York, April 9, 2002*

Compliance with security treaties: Overview

Nicole Deller

Consultant for IEER and Lawyers' Committee on Nuclear Policy

[*Rule of Power or the Rule of Law? An Assessment of U.S. Policies and Actions Regarding Security-Related Treaties*](#), published by the Institute for Energy and Environmental Research and the Lawyers' Committee on Nuclear Policy, is the first in depth study of U.S. compliance with a broad range of security treaties.

In this report, IEER and LCNP look to the United States because of its role as the sole military and economic superpower, because it is a principal advocate of the concept of the rule of law, and because it played a leading role in the creation of many modern international legal institutions.

We have assessed nine treaties that address some of the most pressing global security issues, and found that The United States has violated, compromised, or acted to undermine in some crucial way every one of them. Recent shifts of U.S. policy toward greater reliance on military force, including nuclear weapons, as the main component for securing the people of the United States from a variety of threats sets a dangerous course and a poor example.

In the past few years, we have witnessed U.S. rejection of treaties that were not only widely embraced by the international community, but work to would enhance global security. These include the Comprehensive Test Ban Treaty, the Treaty to Ban Landmines, the International Criminal Court, which although signed by the U.S., it now opposes, a protocol to create a transparency regime for the Biological Weapons Convention and the Kyoto Protocol, which, although not generally considered a security treaty in the traditional sense, addresses the issue of global climate change, which can have significant security implications.

At the same time, the United States is not complying with obligations of several other significant global security treaties. This includes the provision of the Non-Proliferation treaty to take progressive steps toward nuclear disarmament; provisions relating to inspection of its facilities under the Chemical Weapons Convention, the obligation to commit to reducing climate change as set forth in the UN Framework Convention on Climate Change, and there are even questions

as to whether the United States' biodefense research is compliant with the fundamental obligation of the Biological Weapons Convention to not produce biological weapons or means of delivery of biological agent.

And finally, the United States noticed its intention to withdraw from the Anti-Ballistic Missile Treaty, a cornerstone agreement for nuclear policy. This was the first instance of a unilateral withdrawal of a major power from a nuclear arms control treaty after it has been put into effect.

My colleagues Dr. Makhijani and [Dr. Burroughs](#) will address the ways in which the United States is violating the NPT, the CTBT, and the Framework Convention on Climate Change.

Another important example is the Biological Weapons Convention. The BWC, which was ratified by the US in 1975 and entered into force that same year, prohibits the development, production, and stockpiling of biological agents and toxins, except in quantities needed for vaccines and other defensive measures. But the treaty lacks verification measures, such as states' declarations of facilities and programs using these agents. Without these measures, the treaty has no teeth, it cannot detect violations, it cannot deter would-be violators, and it does little to help countries share information on a weapon whose dangers have recently come into sharp focus.

For the past seven years, parties to the treaty have negotiated a protocol to install the declaration and verification regime for monitoring states' use of biological agents and toxins. The United States rejected the draft protocol that was the result of these negotiations, and also sought to bring to a halt the efforts to create any internationally-binding agreement. Rather, it seeks voluntary measures for each state to report and share information.

And while the United States expresses a desire to strengthen the convention, arms control experts began questioning whether the U.S. biodefense programs have passed the limit of activity that is permitted under the Convention. As part of its biodefense program, the United States constructed a model bio-bomb and weaponized anthrax. These activities may be seen as violating the BWC, because, although the stated purpose for the activities is defensive, the BWC does not permit the production of weapons. These and other biodefense activities such as plans to create a genetically enhanced super-strain of anthrax, has been carried out in secret, and so its treaty partners have not been able to assess its compliance. The dangers of this policy are clear. If the United States wants to verify the compliance of other states with the terms of the BWC, it cannot keep its own activities in the dark. And other states may undertake their own secretive biodefense programs, following the U.S. example.

This is but one example where the United States rejected a treaty whose goal was to enhance security in favor of its own measures. We see in this trend a shift away from the desire to participate as an equal in the rule of law on a global scale.

This trend has as its origins nearly a century old tension within the United States between those leaders who seek to create international legal systems for protection of rights and security, and those who fear the encroachment on U.S. sovereignty. Historic examples include: the League of Nations, a vision of President Woodrow Wilson, but opposed by the Senate; the International Criminal Law, which the U.S. and its allies helped to create with the Nuremberg Trials, but now

oppose the largest application of international criminal law, the International Criminal Court; and the human rights treaty system, which the United States helped to establish in conjunction with the creation of the United Nations, but ratification of many key treaties has been blocked, such as the Convention on Discrimination Against Women and the Convention on the Rights of the Child, while with other treaties, notably the International Covenant on Civil and Political Rights, the United States ratified but would not agree to any commitments that surpassed what was already guaranteed in domestic law.

The desire to curtail U.S. participation in international law ignores the benefits that international law, like domestic law, provides order and valuable protections. Government is instituted among individuals so that there may be a means to restrain any one person or group of persons from trampling on the rights of others, and in the case of such transgression, to secure redress. In return, in a democracy, people willingly give up certain freedom of action. The balance between freedom of action and restraint is struck to increase common security. These principles of security and cooperation as governed by law apply on a global plane as they do within individual countries.

Yet many influential U.S. policy makers oppose international legal instruments and specifically treaties, because they are believed to restrict the United States from acting in its own interests and do not sufficiently guarantee that other states will comply. At the heart of these actions, we see the United States rejecting the traditional bargains necessary to reach cooperative agreements in favor of reliance on military defenses.

Senator John Kyl, for example, argued that "a more successful and realistic strategic posture for the United States would rely less on the goodwill of bad actors than what we ourselves can control - our own defenses." This argument might have merit if most countries were habitual violators of their security treaty commitments, yet most nations do obey international law. And while there are violations, legal regimes are not abandoned because some actors do not comply.

In a telling demonstration of its approach toward security-related treaties, the Bush administration appointed as the Under Secretary of State for Arms Control and International Security an individual who believes that international law is not really law. According to Under Secretary John Bolton, "There may be good and sufficient reasons to abide by the provisions of a treaty, and in most cases one would expect to do so because of the mutuality of benefits that treaties provide, but not because the United States is 'legally' obligated to do so."

This argument has dangerous practical implications for international cooperation and compliance with norms. U.S. treaty partners do not enter into treaties expecting that they are only political commitments that can be overridden based on U.S. interests. There is little incentive to create new treaties if leading states may walk away from them before or even after they are enacted. Also, when a powerful state is seen to disregard its treaty obligations, other states will see this as a justification to relax or withdraw from their own commitments.

Undermining the international system of treaties is likely to have particularly significant consequences in the area of global security. International security can best be achieved through coordinated local, national, regional and global actions and cooperation. Treaties like all other

tools are imperfect instruments. Treaties, like national laws, may be unjust or unwise, in whole or in part. If so, they should be amended. But without a framework of multilateral agreements, the alternative is for states to decide for themselves when action is warranted in their own interests, and to proceed to act unilaterally against others when they feel aggrieved. This is a recipe for the powerful to be police, prosecutor, judge, jury and executioner all rolled into one.

Even though the United States is uniquely positioned as the sole economic and military superpower, unilateral actions are insufficient as an alternative to the international legal system for protecting its people. For example, since September 11, prevention of proliferation of weapons of mass destruction is an increasing priority. The U.S. requires cooperation from other countries to prevent and detect proliferation, including through the multilateral disarmament and nonproliferation treaties. But the United States is setting itself above the rules and rejecting the notion that treaties are instruments among equals, in which all parties give up something and get something.

It is difficult to escape the conclusion that the drift of U.S. policy is toward U.S. dominance of the international system. In a sound legal system, rules apply equally to all. In a system of politics, rules need not apply to those states with the military and economic strength not only to defend themselves but also to assert themselves. Implicit in the support of politics over law is the belief that as the strongest country in the world, the United States can afford to make these decisions and assumes that the United States will not suffer consequences from opting out of the international legal system, rather that other nations will adopt themselves to American preferences.

Moreover, there is an assumption that the United States maintains a moral superiority that sets it above the other countries that it seeks to bind to treaty commitments. As expressed by Senator Kyl "Honorably nations do not need treaty limits to do the right thing." This argument is basically an assertion that the world must accept that the United States is right because it is moral in some intrinsic way even when it may transgress the bounds of morality and law upon occasion. If the rest of the world does not accept this view, then the United States is prepared to opt out or use military force based on the decision of the U.S. government alone. The argument thus sets one country above the law and is reminiscent of the nineteenth century idea of "manifest destiny." One popular view of the concept of the time was that God had commanded the United States to "civilize the world." Military force would be a powerful instrument in obeying this command. Finally, America would realize its purpose as "God's right arm in his battle with the world's ignorance and oppression and sin."

This American "exceptionalism" is at odds with the very notion that the rule of law is possible in global affairs. Setting one country above others with a license for the use of power is rather a recipe for dictatorship and chaos.

This is a perilous direction for the United States, which gave the world the very concept of the rule of law. If the United States sets itself up above the law, and bases itself on the rule of power instead, what's to stop other countries from doing the same?