

9. Arms control after the attacks of 11 September 2001

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I. Introduction

A number of events in 2001 led both practitioners and observers to question the usefulness of arms control as an instrument for managing security problems under the present conditions. This was prompted by problems in implementing existing arms control agreements as well as an identified lack of momentum in discussions about new agreements. Apart from the events of 2001, in recent years there has been a more general tendency to argue that arms control is, if not in crisis, then at least failing to play its role in the management of international security.¹

Reviewing the current multilateral arms control agenda, the group of senior experts who advise the United Nations Secretary-General went as far as to report ‘a crisis of multilateral disarmament diplomacy’ in September 2001.²

This chapter does not describe developments in specific arms control processes, many of which are examined in detail in other chapters of this Yearbook.³ This chapter focuses on the impact on the wider arms control agenda of two developments in 2001: the change in the US administration and the terrorist attacks that took place in the United States on 11 September 2001.

As the international system changes, international law cannot be immune to the consequences of those changes. The most important recent change in the international system has been the emergence of one dominant power, the United States. In 2001 the new administration subjected a range of arms control processes to an unaccustomed level of critical scrutiny. Although there were elements of discontinuity in US arms control policy during the first year of the George W. Bush Administration, the approach also reflected some positions that had been evolving in Washington over several years.

Two questions are at the root of US concerns about the role of arms control. The first question is how to respond when parties violate an agreement to which they are a party. The second is whether arms control processes and agreements can modify the behaviour of at least the key states.

¹ This view was reflected in many of the contributions published in Anthony, I. and Rotfeld, A. D. (eds), *SIPRI, A Future Arms Control Agenda* (Oxford University Press: Oxford, 2001).

² United Nations, Review of the implementation of the recommendations and decisions adopted by the General Assembly at its tenth special session: Advisory Board on Disarmament Matters, UN document A/56/418, 27 Sep. 2001, p. 2.

³ Chapter 10 examines nuclear arms control issues, chapter 11 examines proposals to control the military use of space, chapter 12 examines biological and chemical weapon disarmament treaties, chapter 13 examines developments in conventional arms control, and chapter 14 examines multilateral efforts to control missiles.

While these questions of compliance and effectiveness—which cut across all the forms of arms control—are not new, the Bush Administration demonstrated a high degree of clarity in its public statements and a greater assertiveness in decision making than had previously been the case.

The policies adopted by the USA stimulated the wider discussion of how arms control could contribute to international security. The discussions took on an added dimension after the terrorist attacks against the USA on 11 September 2001. These attacks reinforced the view in the USA that there is a close correlation between the states that sponsor and carry out terrorist acts and those that actively seek to acquire nuclear, biological and chemical (NBC) weapons through clandestine programmes. Moreover, the same states are seeking to acquire ballistic missiles and other means that could be used to deliver one or more of these types of weapon.

II. Salient characteristics of arms control

Although there is no precise agreed definition of arms control, in its usage in English it can best be described as a cooperative, purposive approach to armaments policy. The primary aim is to produce effects on the actions of participants that would not otherwise have occurred.⁴ Unilateral measures may fall within this general definition if they are undertaken in order to bring about reciprocal actions. Export control cooperation falls within this general definition, although it is undertaken in order to produce effects on the armaments policy of actors other than those that are cooperating.

Arms control is only one of the factors that influence the volume and distribution of arms. Constraints include the limits of current technology, the resources (human and financial) available to develop, produce, acquire and use arms as well as political decisions about force levels and force structure by responsible authorities in the context of existing threats.

The level of armaments can also be determined through restrictions adopted as part of a post-conflict settlement. These measures may result from external pressure rather than being voluntary acts by the parties.⁵

Other elements that can form part of a definition of arms control are flexible. The scope of coverage can include restrictions on structure (i.e., the levels and types of arms) or restrictions on operations (i.e., the deployment and use of arms). Where restrictions apply to structure, these may include total bans on particular categories of weapons. In the past, the parties to arms control agreements have usually been states. However, sub-state entities are parties to recent arms control agreements.⁶ Arms control agreements can be bilateral,

⁴ A recent discussion of how to define arms control is contained in Rotfeld, A. D., 'The future of arms control', *Polish Quarterly of International Affairs*, spring 2001, p. 10.

⁵ The warring parties in Bosnia and Herzegovina adopted such measures following the 1995 Dayton Agreement. The forced disarmament of Iraq after 1990 was subsequent to United Nations Security Council resolutions.

⁶ E.g., the Agreement on Sub-Regional Arms Control established subsequent to the 1995 Dayton Agreement includes the Federation of Bosnia and Herzegovina (consisting of Croat and Bosnian entities)

involving two parties to an agreement, or multilateral, involving more than two parties.

While most arms control agreements aim to restrict capacities for purposes related to military stability and security, there are others that aim to restrict capacities for humanitarian purposes.⁷ Although the purposes for seeking an agreement can differ, in most cases the aims of arms control have been associated with military security and stability.⁸ While relatively few military capabilities were made subject to controls, in the cold war period the main value of arms control was to act as a channel of communication between adversaries in conditions where few such channels existed. Communication was believed to reduce the risks that particular weapon programmes, deployments or actions would be misperceived by adversaries or potential adversaries. In this way arms control could help make behaviour more predictable.⁹

Arms control arrangements take different forms. Legally binding agreements are undertaken on behalf of the state. They must be signed by representatives authorized to bind the state under international law to the commitments contained in them. These agreements bind not only the current government but also its successors to take steps and allocate resources needed to implement the commitments they contain for as long as the agreement is in force. Such agreements are likely to include remedies that parties could expect to be applied in cases of non-compliance. Politically binding measures are also a commitment by the parties to a particular course of action, and parties could expect criticism in cases of non-compliance. A government would still commit itself to allocate the resources and modify legislation, practices and policies in ways that implement the arrangement.¹⁰ However, political measures would not contain judicial remedies and parties would not expect to be subject to sanctions in cases of non-compliance.¹¹

Compliance and effectiveness in arms control

In analyses of international agreements and political arrangements a distinction has been drawn between compliance and effectiveness.¹² An agreement

and the Republika Srpska as distinct parties, separate from the state of Bosnia and Herzegovina. For further discussion of this agreement see chapter 13 in this volume.

⁷ E.g., the primary objectives of arms control agreements related to anti-personnel landmines are humanitarian rather than strategic.

⁸ In what is often quoted as a classic statement of objectives, Thomas Schelling and Morton Halperin saw arms control as helping to reduce the likelihood of war, reduce its scope and violence should it occur, and reduce the political and economic costs of preparing for it. Schelling, T. C. and Halperin M. H., *Strategy and Arms Control* (Twentieth Century Fund: New York, 1961), p. 2.

⁹ It should be noted that confidence-building measures were and are also intended to contribute to stability, in part through increases in transparency. Recent confidence-building measures are examined in chapter 13 in this volume.

¹⁰ Ahlström, C., *The Status of Multilateral Export Control Regimes: An Examination of Legal and Non-Legal Agreements in International Cooperation* (Iustus Förlag: Uppsala, 1999).

¹¹ Roberts, G., 'International agreements and arms control', *Treaty Times*, Feb. 2001, pp. 5–6.

¹² Raustiala, K., 'Compliance and effectiveness in international regulatory cooperation', *Case Western Reserve Journal of International Law*, vol. 23, no. 453 (2000).

enjoys compliance if the parties to it act in accordance with its provisions. An agreement is effective if it leads parties to change their behaviour in an attempt to become and remain compliant with it.

Accordingly, it is possible for there to be compliance with an agreement without there being effectiveness. This would be the case if an agreement codifies the current practices of parties. Such an agreement would be 'self-implementing' because parties are already fully compliant without any changes in behaviour.

There is a distinction between non-compliance and the violation of an agreement stemming from the intent of parties. Non-compliance might be inadvertent—as a result of a technical failure or a failure in communication, for example. There may also be different views among parties about what constitutes compliance. By contrast, a violation of an agreement is a deliberate decision not to take the actions required or to take actions that are prohibited by that agreement.

While potentially serious, inadvertent or accidental non-compliance need not threaten the continuation of an agreement. In such cases the parties can work together to improve compliance.¹³ If an agreement has been violated, on the other hand, other parties are likely to question whether it still has value unless remedies are applied in an effort to address the violation.

An agreement can be effective without enjoying full compliance. For example, if a state modifies its national laws or regulations or changes its policies as the result of an international agreement, then it has been effective even if the modifications do not bring about full compliance.

Arms control incorporates a wide spectrum of agreements, measures and processes.¹⁴ No single general statement can be made about the extent of compliance and effectiveness with these various regimes, which can be sorted by categories.

One category of agreements is intended to produce effects on the force levels of parties. Bilateral agreements between the USA and Russia place limits on strategic and intermediate-range weapons, as well as limiting missile defences prior to the termination of the 1972 ABM Treaty¹⁵ that was announced in 2001 and will take effect in 2002. Regional agreements limit certain force levels. In Europe, the 1990 CFE Treaty¹⁶ and the 1996 Florence Agreement¹⁷ limit certain conventional equipment. Nuclear weapons are prohibited in the Pacific, by the 1985 Treaty of Rarotonga;¹⁸ in South

¹³ E.g., the Open Skies Consultative Commission (OSCC) was established by the 1992 Open Skies Treaty to resolve questions of compliance with the treaty. For other such bodies see the glossary in this volume.

¹⁴ For a comprehensive overview see annex A in this volume; and Goldblat, J., International Peace Research Institute, Oslo (PRIO) and SIPRI, *Arms Control: The New Guide to Negotiations and Agreements* (SAGE Publications: London, forthcoming 2002).

¹⁵ The Treaty on the Limitation of Anti-Ballistic Missile Systems.

¹⁶ The Treaty on Conventional Armed Forces in Europe.

¹⁷ The Agreement on Sub-Regional Arms Control.

¹⁸ The South Pacific Nuclear Free Zone Treaty.

America, by the 1967 Treaty of Tlatelolco;¹⁹ in South-East Asia, by the 1995 Treaty of Bangkok;²⁰ and in Africa, by the 1996 Treaty of Pelindaba.²¹

In addition, a number of treaties aim at eliminating particular categories of weapon on a global basis. The 1968 Non-Proliferation Treaty (NPT)²² reflects the desire of states parties to cease the manufacture of nuclear weapons, liquidate existing nuclear weapon stockpiles and eliminate from national arsenals nuclear weapons and the means of their delivery. The 1972 Biological and Toxin Weapons Convention (BTWC)²³ represents a commitment by states parties to eliminate biological weapons. The 1993 Chemical Weapons Convention (CWC)²⁴ represents a commitment by states parties to eliminate chemical weapons. The 1997 APM Convention²⁵ represents a commitment by states parties to eliminate anti-personnel mines.

The second category of agreements are intended to restrict the further development and deployment of weapons without prohibiting their acquisition and possession. This category includes bilateral agreements such as the 1976 US–Soviet Peaceful Nuclear Explosions Treaty.²⁶ Other such agreements include the 1959 Antarctic Treaty, the 1963 Partial Test Ban Treaty, the 1967 Outer Space Treaty, the 1971 Seabed Treaty,²⁷ the 1974 Threshold Test Ban Treaty,²⁸ the 1981 Certain Conventional Weapons Convention²⁹ and the 1996 Comprehensive Nuclear Test-Ban Treaty.

The third category of measures are intended to establish conditions under which states may transfer agreed items to others without restricting either the possession or the use of these items by the exporting state.

Three export control regimes—the Australia Group, the Missile Technology Control Regime (MTCR) and the Nuclear Suppliers Group (NSG)—have developed guidelines that participating states are committed to implement through their national export control systems.³⁰ While the decisions about whether to authorize the export of a particular controlled item are taken nationally, in these three regimes participating states have accepted a so-called ‘no undercut’ obligation. If a participating state denies authorization to export an item that is controlled for reasons relevant to the purposes of the regime concerned, it informs other participating states of that decision. Regime part-

¹⁹ The Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean.

²⁰ The Treaty on the Southeast Asia Nuclear Weapon-Free Zone.

²¹ The African Nuclear-Weapon-Free Zone Treaty.

²² The Treaty on the Non-Proliferation of Nuclear Weapons.

²³ The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction.

²⁴ The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction.

²⁵ The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction.

²⁶ The Treaty on Underground Nuclear Explosions for Peaceful Purposes.

²⁷ The Treaty on the Prohibition of the Emplacement of Nuclear Weapons and other Weapons of Mass Destruction on the Seabed and the Ocean Floor and in the Subsoil thereof.

²⁸ The Treaty on the Limitation of Underground Nuclear Weapon Tests.

²⁹ The Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects (also known as the ‘Inhumane Weapons’ Convention).

³⁰ For more on these regimes see chapter 14 in this volume.

ners have committed themselves not to authorize an essentially identical export without prior consultation. A fourth regime, the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, has not agreed either guidelines or a no-undercut principle. However, it has elaborated a set of factors that will be taken into account when a decision to authorize a particular export is taken. All four regimes have elaborated one or more lists of items that should not be exported without authorization by the national authorities of participating states.

The fourth category consists of practical disarmament measures. Through these measures, states provide financial and technical assistance to regulate or safeguard military capacities that are located in other states and considered surplus to requirements and outside the existing force structure of those states. The procedure of safe and secure storage is temporary, pending the destruction of weapons or the liquidation of weapon-related materials and technology. The USA and Russia have carried out a range of activities in the framework of the US-sponsored Cooperative Threat Reduction (CTR) programme, other non-proliferation efforts, and initiatives to enhance the protection, control and accounting of NBC weapon-related materials.³¹ Other examples include the collection and destruction of weapons considered surplus to requirements in a range of post-conflict locations.

Compliance and effectiveness in existing arms control regimes

The various agreements noted above have had different levels of compliance and effectiveness. Those that had a direct impact on the military capabilities of the major powers during the period of the cold war combined a high level of compliance with a high degree of effectiveness. Bilateral US–Soviet agreements on nuclear arms control as well as agreements on conventional weapons between European states could be named in this context. As a result of these agreements, the parties were required to modify domestic procedures and regulations significantly. The requirement for verification led to the creation of new institutions.³² While cases of non-compliance with these agreements have come to light, the agreements have not been violated.

In certain cases, compliance has been achieved without requiring agreements to be effective. For example, many of the states that are parties to multilateral nuclear arms control agreements have neither a military nuclear programme nor a civilian nuclear industry and infrastructure. For these states, commitments on nuclear weapon-free zones and nuclear non-proliferation are self-implementing. Similarly, many of the parties to the Outer Space Treaty do not

³¹ The current status of these programmes in the nuclear sphere is examined in chapter 10 and that of the programmes in the chemical and biological sphere in chapter 12 in this volume.

³² E.g., the Joint Compliance and Inspection Commission (JCIC) was established as the forum to resolve questions of compliance, clarify ambiguities and discuss ways to improve implementation of the 1991 Treaty on the Reduction and Limitation of Strategic Offensive Arms (START I Treaty) and the 1993 Treaty on Further Reduction and Limitation of Strategic Offensive Arms (START II Treaty), and the Joint Consultative Group (JCG) was established by the CFE Treaty for the parties to reconcile ambiguities of interpretation and implementation of the treaty.

have and are never likely to acquire the capacity to take actions prohibited under the treaty—such as establishing military bases and installations or conducting military manoeuvres in outer space.

States that participate in multilateral processes in spite of the fact that the resulting agreements have little relevance to their actions do so for more than one reason. In part they demonstrate political support for the purposes of the agreement in the belief that widespread (ideally universal) support will increase the likelihood of the norm underpinning the regime being implemented. States may participate in order to further other political objectives.³³ Participation is also a means of gaining information that would not be available to non-state parties. While these are reasonable and important objectives, they make only an indirect contribution to the effectiveness of regimes. Effectiveness depends mainly on participation by states whose actions can have a material bearing on the issues under discussion and that are subject to an agreement. To illustrate, if the approximately 70 states parties that do not carry out military or civilian nuclear activities left the NPT while India, Israel and Pakistan (three non-parties with military nuclear programmes) joined it, the treaty would be more effective.

Some regimes have been effective although levels of compliance have been questioned. For example, within the MTCR and the NSG information is periodically exchanged, suggesting that one or more participating states have authorized exports of controlled items that are inconsistent with the guidelines agreed by the regime.³⁴ However, all the participating states have modified their domestic laws and regulations as a consequence of agreements reached in the framework of the regimes. In many cases these revisions to domestic laws have been far-reaching, introducing new primary legislation and completely restructuring the administrative and bureaucratic apparatus used to implement export controls. In addition, these regimes have begun to establish common institutions to help manage processes that, while informal, have come to involve frequent meetings of officials and technical experts to discuss a wide range of issues as well as a high volume of exchanged documents.

While conceptually distinct, the issues of effectiveness and compliance are interrelated. Moreover, the regimes within these four categories can be mutually reinforcing. For example, the effectiveness of informal mechanisms can be enhanced by the existence of multilateral treaties and conventions, even though they carry on their work outside the framework of a treaty. As a specific example, decisions of the Nuclear Suppliers Group have led states with civilian nuclear industries and infrastructure to modify their national export control laws and regulations partly because they are keen to demonstrate their compliance with the NPT. Similarly, decisions by the Australia Group have been facilitated by the desire of its participants to be seen to be in compliance with the commitments related to biological weapon disarmament established

³³ As one example, some European states have participated in multilateral arms control in the expectation that it will accelerate the process of European integration.

³⁴ In 2001 a series of analyses were published criticizing the multilateral export control regimes. The criticisms related in part to questionable records of compliance.

in the BTWC and the commitments related to chemical weapon disarmament established in the CWC.

In summary, there is significant evidence that most arms control regimes enjoy a high degree of compliance. Moreover, many regimes are effective even if full compliance is not achieved. This effectiveness is evidence that states parties are working in good faith to make their national practices compliant. These observations tend to support the view that arms control does have a useful role to play in managing security problems. It also tends to support the view that the main problem in arms control is how to respond in cases where regimes are violated—that is, what actions to take when regimes enjoy neither compliance nor effectiveness.

III. The Bush Administration and arms control

The Bush Administration has injected a sense of urgency into discussions of arms control. As Rose Gottemoeller has expressed it, ‘President Bush is prepared to engage partners in arms control and nonproliferation efforts, but will also move rapidly and unilaterally if they are not willing to join him’.³⁵

President Bush has set ambitious objectives for US foreign and security policy. The reluctance to be drawn into extended or indefinite arms control negotiations is partly a function of domestic politics. Given the nature of his election, for most of the year 2001 he could not be confident about securing a second term in office. This approach also removes the use of extended deliberations as a tactic by which states interested to maintain existing conditions can influence US decisions.

The approach of the Bush Administration to arms control has been characterized as ‘a marked disdain for multilateralism’ and ‘a penchant for go-it-alone policies’.³⁶ Senior officials reject this characterization. The US State Department Special Representative for Nuclear Nonproliferation has stated that ‘multilateral regimes are important . . . global non-proliferation and arms control regimes will continue to be an important and valuable part of US strategy’.³⁷ In addition to supporting some existing arms control regimes the Bush Administration has advocated the creation of certain new regimes. For example, it supports the negotiation of a multilateral treaty to end the production of unsafeguarded fissile material.³⁸ In June 2001, following a review of US policy towards North Korea, President Bush instructed the State Depart-

³⁵ Gottemoeller, R., ‘The current US agenda for the nonproliferation regime’, Paper delivered at ‘How to Harmonize Peaceful Uses of Nuclear Energy and Non-Proliferation’, International Symposium of the Study Group on Peaceful Uses of Nuclear Energy and Non-Proliferation Policy, Tokyo, 7–8 Mar. 2001, available at URL <http://www.jaif.or.jp/english/npsympo/sympo_2nd.html>.

³⁶ Korb, L. and Tiersky, A., ‘The end of unilateralism? arms control after September 11’, *Arms Control Today*, Oct. 2001.

³⁷ Norman Wulf, Remarks at the panel discussion ‘Do NPT review conferences really matter?’ at ‘New Leaders, New Directions’, 2001 Carnegie International Non-Proliferation Conference, Washington, DC, 18–19 June 2001. For additional information see URL <<http://www.ceip.org/files/projects/npp/resources/Conference%202001/panels/nptreview.htm>>.

³⁸ Statement by Ambassador Eric M. Javits, US Representative to the Conference on Disarmament, Geneva, 7 Feb. 2002.

ment to discuss with North Korea how to create a less threatening conventional military posture on the Korean peninsula.³⁹ In a third example, the administration supports the development of a Draft International Code of Conduct (ICOC) against Ballistic Missile Proliferation.⁴⁰

While denying a predisposition against arms control agreements, senior officials have made it clear that continued US participation in any given arms control process (whether multilateral or bilateral) is conditional on its perceived utility in helping to solve current US security problems. For example, Under Secretary of State for Arms Control and International Security John Bolton has stated that 'arms control can be an important part of American foreign policy, but I think the real question is what advances our national interest. And in those cases where, for example, arms control treaties are ineffective or counterproductive or obsolete, they shouldn't be allowed to stand in the way of the development of our foreign policy'.⁴¹ Similarly, the US representative to the Conference on Disarmament stated that:

although maintaining international peace and security is our primary goal and overarching purpose, in the final analysis preserving national security is likewise necessary and essential. Mutual advantage is one key factor, for any arms control treaty must enhance the security of all States Parties. Basic obligations need to be well-focused, clear, and practical, so States will have a rational basis for committing themselves to the future treaty.⁴²

President Bush did not reverse a policy of strong commitment to arms control in general, still less a commitment to multilateral arms control. The Bush Administration has placed arms control much closer to the heart of US foreign and security policy than its predecessor did.⁴³

In the period 1993–2001, the Department of Defense showed sustained interest in providing technical and financial assistance to Russia and some other states that emerged on the territory of the former Soviet Union to help them secure and then safely dismantle weapons and weapon-related know-how.⁴⁴ However, President Bill Clinton, Vice-President Al Gore, and succes-

³⁹ The outcome of the review was described by Assistant Secretary of State for East Asian and Pacific Affairs James E. Kelly in 'United States policy in East Asia and the Pacific: challenges and priorities', Testimony before the Subcommittee on East Asia and the Pacific, House Committee on International Relations, 12 June 2001.

⁴⁰ US Department of State, 'US supports universal code against missile proliferation', Press Release, Washington, DC, 11 Feb. 2002. The ICOC is available at URL <<http://projects.sipri.se/expcon/drafticoc.htm>> and is discussed further in chapter 14 in this volume.

⁴¹ 'Bolton: missile defense may help prevent proliferation', Interview with Under Secretary John Bolton on 14 Aug. 2001, available at URL <<http://www.usinfo.state.gov/topical/pol/arms/stories/bolt0814.htm>>.

⁴² Statement by Ambassador Eric M. Javits (note 38).

⁴³ The most dynamic period of arms control ever seen began in 1987 with the signing of the Treaty on the Elimination of Intermediate-Range and Shorter-Range Missiles (INF Treaty) and ended in 1993 with the signing of the Chemical Weapons Convention. Allan Krass has called this the 'arms control revolution'. Krass, A. S., *The United States and Arms Control: The Challenge of Leadership* (Praeger: Westport, Conn., 1997), p. 29.

⁴⁴ These CTR measures were described by Secretary of Defense William Perry as 'defence by other means'. Perry, W. J., 'Defense by other means', Remarks to US/Russian Business Council, Washington, DC, *Defense Issues*, vol. 10, no. 43 (29 Mar. 1995).

sive secretaries of state and national security advisers showed only limited and sporadic interest in arms control—reflecting a tendency to reduce the attention paid to politico-military aspects of foreign affairs.

The main foreign policy priority of successive Clinton administrations was to bring about a transformation of the political and economic systems of countries in Asia, Africa, Europe and the Middle East. Issues related to politico-military stability, including bilateral and multilateral arms control, were allocated a lower priority.⁴⁵

Senior members of the Bush Administration have long experience and personal interest in strategic and politico-military issues. Writing in early 2000 Condoleezza Rice, subsequently appointed as National Security Advisor to the President, observed that in setting priorities for the USA ‘peace is the first and most important condition for continued prosperity and freedom. America’s military power must be secure because the United States is the only guarantor of global peace and stability’.⁴⁶ Moreover, the leadership believes that the global military security environment contains threats to the vital interests of the USA for which arms control can be one (although not the most important) element in an overall response.

Central to this view of arms control is the belief among the senior decision makers of the Bush Administration that some arms control agreements have been and continue to be violated. In other words, some parties to agreements are not inadvertently failing to comply with agreements but are deliberately cheating. These agreements can only continue to be supported by the USA on the condition that violations cease and the capacities created through violations are eliminated, thereby bringing parties back into compliance.

Under Secretary of State Bolton has characterized the main emphasis of current US arms control policy as ‘the determination to enforce existing treaties, and to seek treaties and arrangements that meet today’s threats to peace and stability, not yesterday’s. Fundamental to the Bush Administration’s policy is the commitment to honor our arms control agreements, and to insist that other nations live up to them as well’.⁴⁷

The logic underpinning the approach towards enforcing existing treaties was trailed in a presentation by Richard Perle in which he observed that:

many treaty constraints that would be desirable if honoured are not desirable where there can be no assurance of compliance. . . . We must recognize that the world will be a safer place when countries that respect the rights of others are more powerful than those that do not. . . . agreements that weaken the Western democracies relative

⁴⁵ Talbott, S., ‘US support for reform in Russia and the other new independent states’, Statement before the Subcommittee on European Affairs, Senate Foreign Relations Committee, 7 Sep. 1993, *US Department of State Dispatch*, vol. 4, no. 38 (20 Sep. 1993), pp. 633–37; and Lake, A., Assistant to the President for National Security Affairs, ‘From containment to enlargement’, Address at the School of Advanced International Studies, Johns Hopkins University, Washington, DC, 21 Sep. 1993, *US Department of State Dispatch*, vol. 4, no. 39 (27 Sep. 1993), pp. 658–64.

⁴⁶ Rice, C., ‘Promoting the national interest’, *Foreign Affairs*, vol. 79, no. 1 (Jan./Feb. 2000), p. 50.

⁴⁷ Statement of the Honorable John R. Bolton, Under Secretary of State for Arms Control and International Security, US Department of State, to the Conference on Disarmament, 24 Jan. 2002.

to states that support terror or launch wars of aggression are foolish excursions that allow statesmen to feel good while they are actually doing bad.⁴⁸

The identification of 'backlash states' occurred in 1994, when National Security Advisor Anthony Lake described Iran, Iraq, Libya, North Korea and Cuba in these terms.⁴⁹ However, the logic underpinning this listing was different from that put forward by the Bush Administration. Outlaw states were identified as states that do not accept certain values, including the pursuit of democratic institutions, free markets, peaceful conflict resolution and collective security. The Clinton Administration advocated a strategy of containment and isolation to pressure the governments of these countries to change their behaviour.⁵⁰ In line with this approach the Clinton Administration raised the issue of supplies of military and dual-use technologies to these states in export control regimes, in bilateral discussions with supplier states and as part of the transatlantic dialogue with the European Union (EU).

The Bush Administration has not characterized arms control as an instrument to be applied to bring about domestic political changes. It has tried to develop a comprehensive strategy based on the understanding that NBC weapons along with missile delivery systems for them pose 'a direct and serious threat to the national security of the United States, our friends, forces and allies'.⁵¹ In this light, arms control has been evaluated first and foremost against the role it might play in reducing what are perceived to be military threats to the USA and its interests.

Within this overall strategy three separate elements have been identified. These elements are to provide protection in conditions where NBC weapon capabilities and missile delivery systems already exist, to adapt the approach to deterrence to take into account contemporary threats, and to prevent or slow the spread of NBC weapons and missile delivery systems. Arms control is expected to play the primary role with regard to prevention and to consist of the following four elements: (a) efforts to persuade or induce governments engaged in proliferation to change their behaviour; (b) efforts to deny proliferators the supply of equipment, material and technology from foreign suppliers; (c) the provision of technical and financial assistance to secure or eliminate surplus capabilities; and (d) efforts to strengthen existing treaties, promote new ones that meet US interests and upgrade the means of verifying implementation.

In line with this approach, US responses to weapon programmes of concern have sometimes but not always taken place within the framework of existing treaties. The issue was put in sharp focus in November 2001, when John

⁴⁸ Perle, R., 'Good guys, bad guys and arms control', eds Anthony and Rotfeld (note 1), p. 50.

⁴⁹ Lake, A., 'Confronting backlash states', *Foreign Affairs*, vol. 73, no. 2 (Mar./Apr. 1994). The concept itself is not new. Robert Litwak has traced a long history of references to 'outlaw', 'pariah', 'rogue' and 'renegade' states in US foreign policy. Litwak, R., *Rogue States and US Foreign Policy: Containment after the Cold War* (Johns Hopkins University Press: Washington, DC, 2000).

⁵⁰ The logic of the approach was explained in Lake (note 49), pp. 45–55.

⁵¹ 'US nonproliferation efforts', US Department of State Fact Sheet, Washington, DC, 7 Sep. 2001, available at URL <<http://usembassy.state.gov/japan/wwwhse0305.html>>.

Bolton named Iraq, Libya, North Korea and Syria as countries that had violated the BTWC and Iran as a state that had 'probably' violated the convention.⁵² In his statement Bolton noted the belief in the United States that other states parties to the BTWC that were not named were conducting offensive biological weapon programmes. Bolton mentioned one state, Sudan, that is not a party to the BTWC but which the USA believes to have an active biological weapon programme. While arms control agreements will sometimes play a role in the US response to perceived military threats, in other cases different instruments will be brought to bear.

In some cases where US responses occur outside the framework of an agreement this could be because the state in which a programme is located is not a party to the agreement establishing controls over programmes of that type. In other cases it could be because there is no agreement establishing controls over the type of programme causing concern.

In one case—Iraq—international efforts to eliminate NBC weapon programmes are primarily connected to the obligations contained in UN Security Council resolutions. The USA has played a leading role in the discussion of how to implement these resolutions.⁵³ At the time Iraq was conducting a clandestine nuclear weapon development programme it was a party to the NPT. However, although a strengthened NPT review process was created in 1995, efforts to address violations through the mechanisms of the treaty have been less consequential.⁵⁴

There is also likely to be a differentiated response from the USA to weapon programmes with similar technical characteristics. This differentiation may reflect the different political relations between the USA and the particular states where programmes are located.

Sanctions and other measures could be applied where the US interests at stake are considered sufficiently important and where this approach is considered likely to yield results. Although the Bush Administration, in common with its predecessor, would prefer not to be required by domestic legislation to use sanctions, in given cases it would keep this instrument available for use at the discretion of the executive.

In September 2001 President Bush determined that institutes and enterprises in China and Pakistan had engaged in missile technology proliferation activities. This determination triggered the imposition of sanctions on both countries under the conditions established by US domestic legislation.⁵⁵

⁵² John R. Bolton, Under Secretary of State for Arms Control and International Security, Remarks to the 5th Biological Weapons Convention RevCon Meeting, Geneva, Switzerland, 19 Nov. 2001, available at URL <<http://www.state.gov/t/us/rm/jan/july/6231.htm>>.

⁵³ Recent developments in the UN efforts to implement the relevant resolutions are discussed in chapter 5 in this volume.

⁵⁴ Described in the Final Document of the 2000 Review Conference of the Parties to the Treaty of the Non-Proliferation of Nuclear Weapons, available at URL <<http://www.un.org/Depts/dda/WMD/finaldoc.html>>. It can be predicted that the issue of NPT non-compliance and responses to it is very likely to be raised by the United States at forthcoming review conferences.

⁵⁵ 'Bureau of Nonproliferation: imposition of missile proliferation sanctions against a Chinese entity and a Pakistani entity', *Federal Register*, vol. 66, no. 176 (11 Sep. 2001), p. 47256. This and other cases are discussed further in chapter 14 in this volume.

In other cases coercive measures are less likely to be applied. During 2001 the administration continued the policy initiated by President Clinton of seeking support in Congress to lift the sanctions imposed on India and Pakistan following the nuclear tests carried out by those two countries in 1998. The imposition of sanctions was required by US domestic legislation and did not reflect the preferred approach of the administration.⁵⁶ In August 2001 the administration was reported to have prepared a request to Congress to remove from law the requirement that sanctions be imposed in response to particular acts.⁵⁷ In the meantime, on 22 September President Bush determined that maintaining sanctions was not in the national security interests of the USA. In October the policy of denying authorization for all exports and re-exports of items controlled for nuclear proliferation and missile technology reasons to India and Pakistan was ended.⁵⁸

At the same time the USA has continued to pursue a regular and high-level dialogue with all three countries—China, India and Pakistan—about arms control, non-proliferation and export control. As these three countries have in recent years developed their own industries producing strategic goods, export control questions have come to play a more significant role in the bilateral discussions between each of them and the United States.

Arms control and missile defence

During 2001 the second element of the Bush Administration's approach to arms control, 'seeking agreements that meet today's threats to peace and stability, not yesterday's', was reflected in the need to reconcile the changes in security policy considered necessary by the new administration with bilateral arms control discussions with Russia.⁵⁹

Of particular importance from the US perspective was the need to modify the existing arms control framework in ways that did not prevent progress in the development of a ballistic missile defence system able to defend the USA from limited attacks.

During the 1980s and 1990s ballistic missiles with progressively longer ranges were acquired by a number of states that had never previously had the capacity to project power. The list of states known to be acquiring (in some cases through indigenous programmes and in some cases through foreign assistance) long-range missiles correlates closely with the group of states alleged to be developing nuclear and/or biological weapons.

⁵⁶ Neither India nor Pakistan is a party to either the NPT or the 1996 Comprehensive Nuclear Test-Ban Treaty. For a discussion of international responses to the testing see Anthony, I. and French, E. M., 'Non-cooperative responses to proliferation: multilateral dimensions', *SIPRI Yearbook 1999: Armaments, Disarmament and International Security* (Oxford University Press: Oxford 1999), pp. 682–83.

⁵⁷ Perlez, J., 'US ready to end sanctions on India to build an alliance', *New York Times* (Internet edn), 27 Aug. 2001.

⁵⁸ 'India and Pakistan: lifting of sanctions, removal of Indian and Pakistani entities and revision in license review policy', *Federal Register*, vol. 66, no. 190 (1 Oct. 2001), pp. 50090–93.

⁵⁹ This is discussed further in chapters 10 and 11 in this volume.

A December 2001 national intelligence estimate finds that 'before 2015 the USA most likely will face [intercontinental ballistic missile] threats from North Korea and Iran, and possibly from Iraq—barring significant changes in their political orientations—in addition to the longstanding missile forces of Russia and China'.⁶⁰ The architecture of a national missile defence system has not yet been agreed in detail. However, the Ballistic Missile Defense Organization anticipates a multi-tiered system able to apply countermeasures throughout the entire trajectory of a missile launched against the USA, from its launch and boost phase to terminal stages of an attack. The USA will not have a capacity for countering existing and emerging medium- to long-range ballistic missile threats in the near term. Responsible officials have therefore stated that 'there is some urgency behind our missile defense development and test efforts. The deployment of missile defenses requires commitment and focus in our programs over many years'.⁶¹

In the view of President Bush, the required testing programme could not be accomplished within the framework of the 1972 ABM Treaty, and on 13 December 2001 Bush announced the United States' plans to withdraw from that treaty and formally notified the governments of Russia, Belarus, Kazakhstan and Ukraine. According to Bush, the ABM Treaty was no longer required since the hostility that once led the USA and the former Soviet Union 'to keep thousands of nuclear weapons on hair-trigger alert, pointed at each other' had been replaced by 'a new, much more hopeful and constructive relationship. We are moving to replace mutually assured destruction with mutual cooperation'. This would include a new strategic relationship between the United States and Russia, acknowledging that 'the greatest threats to both our countries come not from each other, or other big powers in the world, but from terrorists who strike without warning, or rogue states who seek weapons of mass destruction'.⁶²

IV. International effects of the Bush Administration approach

Decisions by the Bush Administration in 2001 were seen internationally as evidence that the United States might pursue its military security interests without due consideration for the concerns of other states. Domestic critics of the administration took up this point during the year.⁶³ Senate Majority Leader Tom Daschle criticized the Bush Administration for a 'willingness to walk away from agreements that were embraced by many of our closest friends and

⁶⁰ US National Intelligence Council, *Foreign Missile Developments and the Ballistic Missile Threat through 2015*, Unclassified summary of a National Intelligence Estimate, Dec. 2001.

⁶¹ Remarks of Lieutenant General Ronald T. Kadish, Director, Ballistic Missile Defense Organization, at the Hearing on Ballistic Missile Defense Testing, before the Military Research and Development Subcommittee, House Armed Services Committee, 14 June 2001.

⁶² The White House, 'Remarks by the president on national missile defense', Press Release, 13 Dec. 2001.

⁶³ E.g., leading figures in the Democratic Party raised the issue of foreign perceptions of the Bush Administration. Gephardt, R., 'The future of trans-Atlantic relations: collaboration or confrontation?', Speech at the Carnegie Endowment for International Peace, Washington DC, 2 Aug. 2001, available at URL <<http://usinfo.state.gov/topical/pol/arms/stories/01080311.htm>>.

allies, and broadly supported by the international community'. Four of the six cases cited in support of this argument were related to arms control.⁶⁴

Subsequently, the administration began to address this criticism directly. During its first year the Bush Administration was not averse to consultation on arms control-related issues. Reflecting the relatively high priority accorded to military security questions by the administration, US officials undertook visits to many countries to take up such matters. However, the administration also made clear that, while US positions may be modified or reviewed in the light of countervailing arguments and evidence, modifications would not be undertaken solely out of deference to other states.

In testimony before Congress Secretary of State Colin Powell noted:

I think we have demonstrated that we are anxious to reach out to the world. We are not unilateralists pulling back . . . But where there is a matter of principle, where we believe strongly about something and we have to stick by our principles, we will do that, and lead, and try to convince others to go with us. This isn't unilateralism; this is leadership. And our friends, I think, are increasingly coming to the understanding that this is principled leadership, the kind that they should respect, follow where they think it is appropriate to follow, and where they think it is not appropriate to follow, let them make their own individual sovereign choice.⁶⁵

The evidence from the first year of the Bush Administration tends to support the interpretation put forward by Powell. Most participants in arms control regimes have paid close attention to ensuring that they comply with provisions of agreements and other measures while paying relatively less attention to compliance by others. However, the approach taken by the USA has raised the issue of whether a more collective approach to compliance is necessary for regimes to succeed.

There are differences between states about the most important priorities in arms control. For example, many European countries would have wished to see more rapid progress in the development of a treaty-based framework for anticipated reductions in the nuclear weapon arsenals of the United States and Russia. With the demise of the START framework, these countries would still prefer to see the reductions in the numbers of nuclear weapons codified in a treaty. Similarly, it remains the view of many European states that it is feasible to develop adequate responses to cases of treaty violations within the framework of multilateral treaties.⁶⁶

At the same time, European Union representatives best placed to evaluate the impact of EU policies in the United States have pointed to a need for an adjustment in thinking about how to implement these preferences.

⁶⁴ The cases were the CTBT, the BTWC protocol, the ABM Treaty and the July 2001 UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects. Daschle, T., 'A new century of American leadership', Remarks at the Woodrow Wilson International Center for Scholars, 9 Aug. 2001, available at URL <<http://usinfo.state.gov/topical/pol/arms/stories/01080903.htm>>.

⁶⁵ Secretary of State Colin L. Powell, Testimony at Budget Hearing Before the Senate Budget Committee, Senate Budget Committee, Washington, DC, 12 Feb. 2002.

⁶⁶ See, e.g., the discussion of European Union approaches to the BTWC in chapter 12 in this volume.

Ambassador Günter Burghardt, Head of the European Commission Delegation to the United States, has noted that 'it will be up to the EU to demonstrate that we have practical solutions to difficult problems and that these solutions are sometimes best achieved by international cooperation. . . . It will clearly be fruitless and counter-productive to preach the virtues of international cooperation and multilateralism as ends in themselves'.⁶⁷

European initiatives in arms control have been relatively few in recent years. There has been a tendency among states in Western Europe to emphasize the need to enhance their autonomous military capabilities in the context of the Defence Capabilities Initiative within NATO and the European Security and Defence Policy (ESDP) within the EU.⁶⁸ Against that background European participation has tended to emphasize the steps taken to comply with existing multilateral treaty commitments as well as measures largely aimed at constraining powers in regions other than Europe. Finally, there has been a reluctance to risk open disagreement with the United States within existing 'West-West' forums, none of which has so far addressed arms control in a regular and systematic manner.

There is an understanding in Europe of the need for the arms control agenda to emphasize progress in areas of common interest in the present political environment. German Defence Minister Rudolf Scharping has pointed to the need to emphasize 'the potential use of biological, chemical, radiological and nuclear weapons' as well as 'the evolution in ballistic missile delivery means and the fact that we are confronted with forms of asymmetric warfare'.⁶⁹

It is not clear that this view is shared in other states of critical importance to arms control. In China, Russia and the Middle East there has been a tendency to try to link arms control processes. Rather than treating the issues involved in each process on their merits, this approach assumes that concessions can be traded across processes in search of a 'grand bargain'.

While there are many recent examples of this approach, three can be used for purposes of illustration.

For a considerable time Russian leaders emphasized that a US withdrawal from the ABM Treaty would jeopardize other nuclear arms control agreements.⁷⁰ Russia is moving away from this approach under the leadership of President Vladimir Putin. The US decision to give the development of the ballistic missile defence programmes higher priority than the preservation of the ABM Treaty required the Russian Government to formulate a response.

⁶⁷ 'Remarks to a renewed transatlantic security partnership in the aftermath of 11 September 2001 terror attacks', Joint Hearing, Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy and Committee on Industry, External Trade, Research and Energy, European Parliament, Brussels, 19 Feb. 2002, available at URL <<http://www.eurunion.org/news/speeches/2002/020219gb.htm>>.

⁶⁸ Chapter 3 examines the development of the ESDP. The link to arms control is further developed in Bayles, A., 'Arms control: an endangered species in the new security environment?', eds Anthony and Rotfeld (note 1), pp. 17–21.

⁶⁹ Speech of Rudolf Scharping at Global Security: New Challenges, New Strategies, 38th Munich Conference on Security Policy, 3 Feb. 2002, available at URL <<http://www.securityconference.de>>.

⁷⁰ Speech of the Russian Minister of Defence Sergey Ivanov at 'Global and Regional Security at the Beginning of the 21st Century', 37th Munich Conference on Security Policy, 4 Feb. 2001, available at URL <<http://www.securityconference.de>>.

President Putin, while regretting the decision, made clear that it represented no threat to Russian security. Moreover, he reiterated his previous commitment to further deep reductions in nuclear forces.⁷¹

Leading Chinese officials have taken the view that progress in processes aimed at non-proliferation of weapons depends not only on the merits of the particular cases but also on developments in other areas of arms control and strategic affairs.⁷² Chinese officials continue to emphasize the existence of an 'international arms control and disarmament system' that should be addressed as an integrated whole, not in a piecemeal manner, rather than as a series of discrete attempts to solve particular problems.⁷³

The refusal by some Arab states to sign the CWC or ratify the BTWC without the simultaneous elimination of nuclear weapons—and in particular those of Israel—is a third such example.

The Bush Administration also brought several issues under discussion to a point where decisions would be required from other countries.

The fact that the USA chose a conference of states parties as the forum in which to name particular states as violators of the BTWC forced other parties to make a determination about whether they share the US finding. In addition, states parties have been forced to begin thinking in a less abstract way about how to respond to detected violations.⁷⁴

President Bush decided that there was convincing evidence that China had engaged in missile proliferation, knowing that the USA would be obliged to impose sanctions in response to this determination. This in turn increased the pressure on the Chinese Government to respond to questions about what steps it was taking to implement undertakings related to its national missile-related export control system given to the USA in November 2000.⁷⁵

The US approach will require other states to consider their approach to two factors in particular: the degree to which existing arms control regimes enjoy compliance; and the degree to which these regimes are effective instruments with which to manage security problems.

V. The impact of the attacks of 11 September

In the period immediately after the terrorist attacks against the United States on 11 September 2001, it is natural for states to pay considerable attention to the risks posed by the acquisition of military capacities of different kinds. Two issues in particular appear to have become the main focus of attention:

⁷¹ For further discussion see chapters 10 (in particular) and 11 in this volume. The position may also reflect a judgement that the character of Russian statements about missile defence will influence the US approach to the form in which reciprocal deep cuts in nuclear arsenals are codified.

⁷² E.g., Sha Zukang, 'Non-proliferation at a crossroads,' Address to the Wilton Park Conference on Non-Proliferation, 14 Dec. 1999, available on the Internet site of the Ministry of Foreign Affairs of China, URL <<http://fmprc.gov.cn>>.

⁷³ Statement by Hu Xiaodi at the Plenary of the 2002 Session of the Conference on Disarmament, Geneva, 7 Feb. 2002, available at URL <<http://www.fmprc.gov.cn/eng/c464.html>>.

⁷⁴ For further discussion see chapter 12 in this volume.

⁷⁵ For further discussion see chapter 14 in this volume.

(a) whether states that sponsor and support actors that carry out terrorist acts can deter military attacks carried out against them; and (b) how to prevent those carrying out terrorist acts from acquiring military capacities and in particular capacities that would allow them to carry out acts of 'catastrophic terrorism'.

Military force was applied directly against armed groups in Afghanistan that were identified as being complicit in the attacks of 11 September. At the same time, what is expected to be an extended campaign against terrorism was initiated by a coalition of states led by the USA. As part of that wider campaign the immediate focus was on putting in place counter-terrorist measures based on law enforcement and political, diplomatic, financial and intelligence-sharing activities.

Apart from the actions in Afghanistan, US Secretary of State Powell made clear that cabinet ministers had 'not made any recommendation to the President about the major use of military force and the President has made no decision as yet with respect to such use of force'.⁷⁶ At the same time, the future use of force was not excluded as part of the wider campaign against terrorism.⁷⁷

In this context those arms control processes intended to prevent the acquisition of nuclear and biological weapons along with missile delivery systems for them can be expected to receive greater attention. This focus would be logical because these weapons and delivery systems could provide states with military capacities that might deter the use of force against them by the USA and, conceivably, other states.

The second issue that has been addressed more urgently is the risk that terrorist groups might gain access to nuclear, biological or chemical weapons.

Arms control agreements have historically been concluded between states and establish rules that are binding on states. The 11 September attacks have increased the attention being given to the idea that agreements might establish commitments with regard to non-state actors. Existing agreements contain general obligations in line with this idea. For example, the CWC includes a general obligation not 'to develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone' under any circumstances. Similarly, the BTWC includes a commitment not to transfer biological weapons to 'any recipient whatsoever'.⁷⁸

In this context the role of arms control in preventing the acquisition of NBC weapons by terrorist groups is related to three issues: first, ensuring compliance with existing non-proliferation agreements; second, achieving participation in those agreements by all states with capacities that could contribute to NBC weapon programmes of concern, including those that are not currently

⁷⁶ Powell, C. L., Testimony before the House Appropriations Subcommittee on Foreign Operations, Export Financing, and Related Programs, 13 Feb. 2002.

⁷⁷ President Bush has stated that 'every nation now knows that we cannot accept—and we will not accept—states that harbour, finance, train, or equip the agents of terror. Those nations that violate this principle will be regarded as hostile regimes. They have been warned, they are being watched, and they will be held to account'. Remarks by the President at the Citadel, Charleston, S.C., 11 Dec. 2001 available at URL <<http://www.whitehouse.gov/news/releases/2001/12/20011211-6.html>>.

⁷⁸ For further information see chapter 12 in this volume.

parties; and third, ensuring that states that choose to remain outside existing agreements act in a responsible manner in regard to any entity that may sponsor or carry out terrorist acts.

A general rule that non-state actors should not have access to any military capacities has not found universal support. The USA has been a particularly strong opponent of a general rule of this kind. For example, during discussions held in the framework of the Organization for Security and Co-operation in Europe (OSCE) in 2000 and in the United Nations in 2001 the USA made clear its opposition to such a rule if applied to small arms and light weapons.

The USA described the limitation of trade in small arms and light weapons only to governments as conceptually flawed since it would 'preclude assistance to an oppressed non-state group defending itself from a genocidal government. Distinctions between governments and non-governments are irrelevant in determining responsible and irresponsible end-users of arms'.⁷⁹

VI. Conclusions

Developments in 2001 have been seen in some quarters as evidence of a loss of confidence by key actors—in particular the USA—in the capacity of arms control to manage security problems. The evidence suggests that recent developments reflect an adaptation of arms control, which is in essence a framework in which structured dialogue can be organized around armaments policy, rather than abandonment.

As part of this process of adaptation there may be a certain loss of coherence in the position of particular states with regard to arms control. For example, a state may agree measures in the framework of one regional process based on principles that would not be acceptable if applied in a different location or on a global basis. This may be a transitory phenomenon as new norms and principles develop in a changing security environment.

A rigid distinction between law and politics is difficult to draw where legal changes are attempted in parallel with efforts to modify approaches to the underlying issues subject to legislation. Where discussions of law are used as an instrument of political change, frictions are inevitable at the places where legal and political processes meet. At present, because of its dominant position, the views and policies put forward by the USA generate the most influential pressures shaping the attitudes on which future agreements will be based.

In 2001 this friction was felt in the discussions of the ABM Treaty, of a protocol to verify the BTWC and of whether a general rule should be adopted prohibiting military assistance to non-state actors. Each of these discussions dealt with an important but contested underlying issue of principle. In helping to frame the issues and by providing a context for structured discussion, arms control was fulfilling one of its most important functions.

⁷⁹ Plenary Address by John R. Bolton, US Under Secretary of State for Arms Control and International Security Affairs, at the UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, New York, 9 July 2001, available at URL <<http://www.state.gov/t/us/rm/janJuly/4038.htm>>.

A change in approach to arms control in the USA under the Bush Administration has brought about a need for adaptation. While restoring the traditional linkage between arms control and military security, the administration also sought to adapt agreements, processes and arrangements to its view of the contemporary strategic environment.

During 2001 the need for arms control dialogue to be conducted in a cooperative security framework was underlined. However, it is not clear whether other states share the US view of the contemporary strategic environment or, to the extent that they do, draw the same lessons with regard to the need to adapt arms control regimes. It is increasingly understood that existing institutions are not adequate to allow those states that share values to organize their activities in pursuit of common purposes. The main challenge will be to engage the United States in this common framework on the basis of responsible leadership and with the willing acceptance of its partners.

The proposals put forward by the Bush Administration built on positions whose evolution can be traced over the previous decade. While the issues were not new, the manner in which the Bush Administration addressed them changed the character of the discussion. Many governments have stated that they regard arms control as a valuable and necessary activity. However, while existing and putative bilateral and multilateral arms control processes had been discussed among officials for several years, in the absence of sustained involvement by senior political decision makers these discussions produced few results. In particular, discussions rarely engaged with the critical choices that would have to underpin any new agreements.

Senior ministers in the Bush Administration have created a political environment in which these critical choices will be required by governments within a relatively short time frame to establish the basic frame of reference for arms control processes.

While the Bush Administration had already changed the context of the debate about arms control prior to the terrorist attacks on the USA on 11 September, these attacks are likely to contribute to further changes. In particular, there is likely to be greater focus on the issue of how to ensure compliance with agreements relating to NBC weapons along with delivery systems for them. However, while arms control is likely to play an indirect and supporting role as one of the instruments applied in the wider campaign against terrorism, its main emphasis and impact will continue to be in other areas of international security.