

Arms Control Procedure: Inspection by the People—A Reevaluation and a Proposal

Barry M. Portnoy

Follow this and additional works at: <http://scholarship.law.cornell.edu/cilj>

 Part of the [Law Commons](#)

Recommended Citation

Portnoy, Barry M. (1971) "Arms Control Procedure: Inspection by the People—A Reevaluation and a Proposal," *Cornell International Law Journal*: Vol. 4: Iss. 2, Article 3.

Available at: <http://scholarship.law.cornell.edu/cilj/vol4/iss2/3>

This Note is brought to you for free and open access by the Journals at Scholarship@Cornell Law: A Digital Repository. It has been accepted for inclusion in Cornell International Law Journal by an authorized administrator of Scholarship@Cornell Law: A Digital Repository. For more information, please contact jmp8@cornell.edu.

Arms Control Procedure: Inspection by the People - A Reevaluation and A Proposal

Barry M. Portnoy*

In the late 1950's, Seymour Melman and Louis Bohn, working independently, both suggested a plan for arms control inspection which was rather different from the approaches to verification which had been discussed until that time.¹ Essentially, their idea was to have the people, as individuals, report violations of arms control agreements by their governments and their neighbors to an international authority. At the time of its first presentation, this idea caused a considerable stir among those interested in arms control and disarmament; and various specific proposals for implementation were advanced.² Since then, however, this idea has been almost completely ignored by politicians and academicians alike.³ In view of the contemporary emphasis on verification procedures at the Strategic Arms Limitation Talks, a reevaluation of this proposal may be worthwhile at this time.

I. MECHANICS OF A POPULAR REPORTING SYSTEM

The success of a plan for popular reporting of arms control violations requires the presence of four factors. First, a sufficient number of people must be willing to report violations. Second, the people must be able

*This paper was originally prepared for a seminar on the impact of technology on international arms control, given by the Cornell Program on Science, Technology, and Society.

1. S. MELMAN, *INSPECTION FOR DISARMAMENT* 38-44 (1958); Bohn, *Non-Physical Inspection Techniques*, in *ARMS CONTROL, DISARMAMENT, AND NATIONAL SECURITY* 347-53 (D. Brennan ed. 1961).

2. *E.g.*, T. SLICK, *PERMANENT PEACE* 79-80 (1958); G. CLARK and L. B. SOHN, *WORLD PEACE THROUGH WORLD LAW* 267 (2d ed. 1960); and L. SZILARD, *THE VOICE OF THE DOLPHINS* 57-59 (1961).

3. In general, arms limitation verification procedures are divided into two categories. The first is known as "national" or "unilateral" verification techniques which do not require an agreement for inspection within the boundaries of another nation. The second category is termed "on-site inspection", in which a nation would agree to allow nationals of another country to inspect within its territory to determine if violations had occurred. . . .

Scoville, *Verification of Nuclear Arms Limitations: An Analysis*, 26 *BULL. OF THE ATOMIC SCIENTISTS* 6 (Oct. 1970). See also D. W. WAINHOUSE, *ARMS CONTROL AGREEMENTS: DESIGNS FOR VERIFICATION AND ORGANIZATION* (1968). Although this book attempts to examine all verification procedures discussed in disarmament negotiations since World War II, there is no hint of inspection by the people.

to report; there must be a readily available and secure means of communication between the people and the authority to which they are to report. Third, the people must know when violations occur; or, in other words, it must be likely that a willing member of the public will learn of a violation and that he will recognize it as such. Fourth, the authority to which violations are reported must be capable of determining their veracity.⁴

The willingness of the people to report against their own government will be the most difficult of these factors to establish. It has been suggested that rewards or the right to resettle in another country might be offered to encourage popular participation in arms control inspection.⁵ It is difficult to imagine, however, how the rewards might be delivered or the informer's right to travel protected when opposed by a hostile government.⁶ Similarly, imposing a duty upon the people to report violations by enacting national laws making it a crime not to report⁷ probably would not insure the necessary cooperation. Faced with contradictory governmental policies, people can be expected to choose a course of inaction rather than action; and this would be especially so if the violation of the arms control treaty appeared justified by changed circumstances.⁸

Perhaps the best insurance of the willingness of people to participate in arms control inspection would lie in their recognition of the arms control agreement as beneficial to their national and personal interests.⁹ Both patriotism and the survival instinct can be used to lead men to report violations rather than conceal them. For this to happen, the agreement must be beneficial to all the participating governments; and this fact, in addition to the dangers which flow from evasion of the agreement, must be pointed out to the people. Mutual advantage to the participating nations is probably a requirement for the existence of an arms control agreement not imposed by arms. Generating popular support for the agreement will require the use of the communications media. It has been suggested that national leaders undertake to explain the advantages of the agreement to their people¹⁰ and that minimum amounts of radio and television time and newspaper space for the same purpose be made

4. For a similar but not identical list of factors see Galtung, *Popular Inspection of Disarmament Processes*, 2 COOPERATION AND CONFLICT 121 (1967).

5. E.g., L. SZILARD, *supra* note 2, at 57-58.

6. See, e.g., the discussion of the Soviet policy on emigration in H. J. BERMAN and P. B. MAGGS, *DISARMAMENT INSPECTION UNDER SOVIET LAW* 41-43 (1967).

7. This method of enforcement was suggested in Bohn, *supra* note 1, at 349.

8. See Galtung, *supra* note 4, at 123.

9. See Bohn, *supra* note 1, at 349.

10. L. SZILARD, *supra* note 2, at 57.

available to the international authority charged with reviewing citizen reports.¹¹

A secure channel of communication from the people to the international authority to which they are asked to report is critically important to the plan, and almost everyone who has discussed inspection by the people has suggested a mechanism to achieve it. Some have suggested that key individuals, particularly prominent scientists and engineers, be interrogated by the international authority on a regular basis.¹² Some have suggested that telephone offices be maintained throughout the participating countries so that anonymous communications might be received despite wiretapping.¹³ Professor Szilard proposed that offices be opened where a reporter could simply walk in with his family, make a deposition, and be granted asylum.¹⁴ Professor Galtung called upon his scientific colleagues to design "a free transistor sender and receiver to [be placed in] all households, and tuned at the wavelength of the" international authority.¹⁵ All of these suggestions seem to require a greater intrusion upon national sovereignty than is necessary or, for that matter, than is probably acceptable.

Essentially what is required of a communications channel from national populations to an international authority is that it lend itself to constant reliability testing. The international postal system seems sufficient for the task. Test letters could be sent from various parts of the participating countries to the publicly announced address of the international authority. Tampering with or the nondelivery of such mail would be evidence that violations were occurring and appropriate sanctions could be imposed.¹⁶

Advocates of inspection by the people have generally assumed that knowledge of significant arms control violations will be available to a sufficient number of people to insure reporting if the other three factors are present.¹⁷ The validity of this assumption depends in part upon the level at which national armaments are maintained under the agreement. Under an agreement between the United States and the Soviet Union which freezes the number of nuclear delivery systems which each side can maintain at something over 1,000 on the ground and something over 500 under water, it is extremely unlikely that either side could develop, manufacture, and deploy a sufficient number of weapons to tip the power

11. S. MELMAN, *supra* note 1, at 39-40.

12. Bowen, *Soviet Research and Development: Some Implications for Arms Control Inspection*, 7 J. CONFLICT RESOLUTION 426, 447 (1963).

13. Bohn, *supra* note 1, at 349-50.

14. L. SZILARD, *supra* note 2, at 58.

15. Galtung, *supra* note 4, at 123.

16. S. MELMAN, *supra* note 1, at 41.

17. *E.g.*, Bowen, *supra* note 12, at 442-43.

balance without many thousands of its citizens being aware of the scheme. On the other hand, an agreement which sought to eliminate all nuclear arms might be evaded by a small cabal of scientists and politicians who put together three or four nuclear warheads deliverable in suitcases.¹⁸

Furthermore, although the level of popular sophistication required will depend upon the nature of the agreement to be negotiated, it is probably fair to assume that some education of the people will always be necessary to enable them to recognize violations. It has been urged, for example, that there are over 30,000 parts in the relatively simple V-2 rocket and that, considering the thousands of people involved, it would be impossible to exclude all potential reporters from the manufacturing process.¹⁹ The question now being asked is how many of these people will be aware of the violation to which they are contributing. The answer might be particularly small in a "closed" society like that of the Soviet Union.²⁰ The solution again seems to lie in the use of the communications media. By advertisements in technical journals and other public statements, the international authority might elaborate on the kinds of activity which indicate that violations are occurring: the operation of certain processes or of certain machines; the production of material to certain dimensional requirements or to certain strengths and temperature requirements, etc.²¹

At least two serious problems remain if inspection by the people is to operate effectively. First, there is the danger that the international authority could be flooded with false reports which weaken its alertness and increase its reaction time. Such reports might be made in good faith by well-meaning but mistaken individuals or deliberately by those seeking to avoid detection of present or future violations. Second, there is the danger that a flow of ambiguous reports will cause a continuous series of alarms and international crises. If this were to happen, the value of the arms control agreement would be greatly reduced; and it

18. For the idea that the type of verification required depends on the level armaments remaining see, for example, A. GOTLIEB, *DISARMAMENT AND INTERNATIONAL LAW* 132 (1965), Scoville, *supra* note 3, at 6, and Lall, *Perspectives on Inspection for Arms Control*, 21 *BULL. OF THE ATOMIC SCIENTISTS* 51, 53 (Mar. 1965).

19. Bowen, *supra* note 12, at 442-43.

20. [T]here is the emphasis on compartmentalized knowledge. Restrictions on information pervade the entire system. The citizen is not kept informed, as we would define the term; some information is doled out to him, or he may find things out for himself; but generally information is made available only on a narrowly interpreted "need to know" basis, with even high officials aware of only a part of the total picture.

A. H. DEAN, *TEST BAN AND DISARMAMENT: THE PATH OF NEGOTIATION* 56-57 (1966). See also, Z. L. ZILE, *LEGAL ASPECTS OF VERIFICATION IN THE SOVIET UNION* 53 (1967).

21. S. MELMAN, *supra* note 1, at 41.

is doubtful that it would remain in force for very long. The solution to these problems lies in devising an efficient mechanism through which the international authority receiving individual reports may determine their veracity.

Although several advocates of inspection by the people have noted the existence of these problems,²² none has attempted a solution. It may be helpful to consider the operating mechanism of existing supranational institutions which handle communications from individuals. The European Commission on Human Rights, for example, has received over 4,600 applications from individuals or groups of individuals since its founding in 1953. About 95 percent or about 4,400 of these were declared inadmissible by the Commission without requiring comments from the governments complained against; about 150 of the remainder were rejected after obtaining the written or oral observations of the governments concerned; 39 of the remaining 53 were consolidated as raising the same issue; and so only about 18 cases were referred to the Committee of Ministers or the European Court of Human Rights.²³ The Commission employs a three-step procedure. First, it uses internal information processes to determine whether to accept the petition. If it is accepted, the accused government is confronted with the evidence against it and allowed to respond; an inquiry may be held; and attempts are made to reach a settlement. Finally, if all else fails, sanctions are applied.²⁴

The international authority which receives reports of arms control violations might be able to operate a similarly effective three-step procedure. Reports concerning violations within one nation could be forwarded to the representatives of an adversary power. On the basis of intelligence gathered by "national means" (satellite photography, espionage activity, etc.), the adversary power could determine whether to proceed with the report. Hopefully, most reports would be disposed of in this manner; but if it seemed that there were grounds for serious concern, the nation charged could be confronted by the report and asked to explain. Documentary evidence might be submitted; and when necessary, on-site inspection allowed. Finally, if the charged government was un-

22. *E.g.*, Bohn, *supra* note 1, at 352-53; and Galtung, *supra* note 4, at 123.

23. *Practical Application of the European Convention on Human Rights: Some Results Achieved 1953 - 1st September, 1970*, Council of Europe Information (Legal), at 3-4 (1970).

24. For a detailed study of the procedures of the European Commission on Human Rights and similar supranational institutions see F. L. GRIEVES, *SUPRANATIONALISM AND INTERNATIONAL ADJUDICATION* (1969); MacBride, *The European Court of Human Rights*, 3 N.Y.U.J. INT'L L. & POL. 1 (1970); Wilkoc, *Procedures to Deal with Individual Communications to International Bodies: The Sub-Commission on Prevention of Discrimination and Protection of Minorities*, 1 N.Y.U.J. INT'L L. & POL. 275 (1968); and Gormley, *The Procedural Status of the Individual Before Supranational Judicial Tribunals*, (pts. 1-2), 41 U. DET. L. J. 282, 405 (1964).

able or unwilling to establish that violations had not occurred or to correct a recognized violation, sanctions could be applied.²⁵

II. FUNCTIONAL CAPACITY OF PEOPLE'S INSPECTION

Modern weapons development has been conceptually divided into four stages: research and development ("R and D"), testing, production, and deployment.²⁶ Conventional verification procedures have emphasized detection at either the second or fourth stage. Testing can be checked by seismic and atmospheric analysis at great distances, and atmospheric tests and deployment are virtually impossible to shield from satellite reconnaissance.²⁷ At the same time it has been argued that no conceivable amount of on-site inspection could possibly investigate all structures capable of housing "R and D" or production facilities, particularly in a state run economy like that of the Soviet Union.²⁸

Inspection by the people, on the other hand, places a greater emphasis on detection during "R and D" or production. It may be possible for a small group of men to conduct tests and deploy advanced systems in remote and isolated areas; but "R and D" cannot be separated from sophisticated facilities at key centers with highly skilled work forces; and production invariably requires the participation of large numbers of people.²⁹ Similarly, since inspection by the people makes use of the varied capacity of human beings rather than the limited capacity of mechanical instruments, more sophisticated information can be monitored. For example, where conventional verification procedures em-

25. For a discussion of "challenge inspection" by adversaries in a context other than inspection by the people see Lall, *Information in Arms Control Verification*, 20 BULL. OF THE ATOMIC SCIENTISTS 43 (Oct. 1964). The procedures for control of nuclear energy used by the European Atomic Energy Community, the European Nuclear Energy Agency, and the International Atomic Energy Agency indicate that records inspection together with occasional on-site verification can maintain effective controls. See Gorove, *The Inspection and Control System of the European Nuclear Energy Agency*, 7 VA. J. INT'L L. 68 (1967); Gorove, *The First Multinational Atomic Inspection and Control System at Work: Euratom's Experience*, 18 STAN. L. REV. 160 (1965); Willrich, *Safeguarding Atoms for Peace*, 60 AM. J. INT'L L. 34 (1966); and W. YOUNG, EXISTING MECHANISMS OF ARMS CONTROL (1966).

26. Scoville, *supra* note 3, at 8.

27. *Id.*

28. Bowen, *supra* note 12, at 443-44.

29. An interesting consequence of the ability to monitor the comparatively early phases of "R and D" and production is that the response time for coping with discovered evasion is increased. This, in turn, both decreases the incentive to cheat and allows greater flexibility in designing sanctions. See *id.*, at 444-45; Keeton and Schwarzenberger, *The Problem of Sanctions*, in H. BULL, THE CONTROL OF THE ARMS RACE: DISARMAMENT AND ARMS CONTROL IN THE MISSILE AGE 215, 229 (2d ed. 1965); and Sohn, *Responses to Violations: A General Survey*, in SECURITY IN DISARMAMENT 178 (R. Barnet and R. Falk ed. 1965).

phasize quantity controls, inspection by the people may also be concerned with quality limitations. Inspection by the people, then, is both reinforcement for and complementary to more conventional verification procedures.

Because of these qualities, inspection by the people has particular relevance to the problem of arms control caused by scientific and technical innovation. History shows that it is probably impossible to stop technological advances in weapons from being made.³⁰ Furthermore, because of the existing interrelationship between the military and peaceful uses of science, it may be unwise to attempt to halt all efforts at military research and development.³¹ What is desirable is that any arms control agreement be kept abreast of the latest developments in weapons.³² Inspection by the people could call attention to such developments in their early stages when negotiations on their control are likely to be most productive.³³

Perhaps the most significant consequence of inspection by the people is in the effects it might have in areas other than the detection of violations. Since modern technology has enormously increased the means by which surveillance can be avoided, it is probably impossible for any verification system or combination of systems to detect all arms control violations if the violators have the support and cooperation of a large number of people.³⁴ The public relations campaigns which must accompany inspection by the people would undermine this support and cooperation necessary for evasion. Not only would such efforts make it

30. "Proposals for arms control in recent years have regularly been made irrelevant by the changing character of weapons." H. BULL, *supra* note 29, at 196. See also Bunn, *Missile Limitation by Treaty or Otherwise*, 70 COLUM. L. REV. 1, 3-4 (1970).

31. This is not meant to suggest that no efforts should be made to impede strictly military uses of science and technology. Test bans on specific weapon systems, for example, may sufficiently impede their development to allow sufficient time for development of control mechanisms. What is suggested is that a strictly enforced ban on all military "R and D" might seriously impede inquiry into areas where military and nonmilitary applications overlap.

32. See H. BULL, *supra* note 29, at 195-201.

33. It is patently easier to convince governments not to invest in new weapons systems than it is to convince them to throw these systems away after billions have been spent on their production and deployment. For a stimulating discussion of the problem of surplus systems and their relationship to arms control agreements see Stone, *When and How to Use 'SALT'*, 48 FOREIGN AFF. 262 (1970).

34. A valid point in this discussion is that no inspection scheme is likely to succeed in the face of a unitedly hostile populace, set to deceive the inspectors and to protect their own government, whether it is cheating or not. Guerrilla warfare teaches a parallel lesson. Even a small conspiratorial minority cannot be suppressed when the populace favors them and will hide them in its midst.

Pool, *Public Opinion and the Control of Armaments*, in ARMS CONTROL, DISARMAMENT, & NATIONAL SECURITY, *supra* note 1, at 333, 337. See also S. MELMAN, *supra* note 1, at 53, 260-91; and Galtung, *supra* note 4, at 133-34.

harder and more risky to cheat because of the greater likelihood of exposure, but they also would create morale problems and confusion within government ranks on what real policy is.³⁵ In short, inspection by the people would be a rather substantial deterrent to evasion of an arms control agreement.

III. PROSPECTS

The most persistent criticism of people's inspection is that it would be politically unacceptable to most existing governments and especially so to a "closed" society like that of the Soviet Union.³⁶ No major power, it might be argued, is prepared to allow its citizens to determine by themselves when disloyalty is required. Traditional patriotic emphasis on secrecy and national loyalty may well prevent the adoption of such a plan. Soviet preoccupation with secrecy and the severe controls that have been placed on communication between foreigners and Soviet citizens, it is said, make their opposition to inspection by the people especially predictable.

The rationale behind these policies, however, has been increasingly questioned because of changed circumstances and advancing technology.³⁷ Satellite photography and the invulnerability of submarine based missiles make traditional concern with the details of military secrecy obsolete for both sides. Indeed, the nature of strategic deterrence being practiced by both sides today requires that each be somewhat aware of the other's military capacity.³⁸

Also, it should be pointed out that the free communication required for inspection by the people only need be one-way communication, from the people to the international authority. Each national government might be given a veto on communications to the people to insure that they were not being used as a vehicle for any ideology other than arms control. While governments might still reject such a compromise, per-

35. The main purpose of such a propaganda effort if it is to succeed should, however, not be to sell disarmament to the public, as such, but rather to commit the propagandizing governments themselves to the scheme for control and to make it more difficult for them to cheat.

Pool, *supra* note 34, at 336. See also Szilard, *To Stop or Not To Stop*, 16 BULL. OF THE ATOMIC SCIENTISTS 82, 84 (1960).

36. E.g., J. E. DOUGHERTY, *ARMS CONTROL AND DISARMAMENT: THE CRITICAL ISSUES* 63 (1966); A. DALLIN, *THE SOVIET UNION AND DISARMAMENT* 153-54 (1964).

37. It has been argued that an important reason for Soviet concern with secrecy is the fear of a first strike by the West. See Bloomfield and Henkin, *Inspection and the Problem of Access*, in *SECURITY IN DISARMAMENT*, *supra* note 29, at 107, 108-09; and A. DALLIN, *supra* note 36, at 142-83.

38. Keeton and Schwarzenberger, *supra* note 29, at 221-22.

haps the only accurate way to gauge their response is to propose it.³⁹

A second objection which has been raised is that fear of retaliation by one's own government will prevent a sufficient number of people from cooperating with a plan for inspection by the people.⁴⁰ Both the United States and the Soviet Union, for example, have laws which make the divulgence of information related to national security a crime carrying severe penalties.⁴¹ Even if these laws were repealed or modified, there is probably no way to protect a potentially cooperative citizen from the fear of less formal means of repression or of social ostracism.⁴² Similarly, the difficulty of guaranteeing asylum to reporters has already been discussed.⁴³ At the same time, the ability of governments to suppress reporters among the public should not be overemphasized. Evidence of such suppression would indicate a violation of the arms control agreement; and the international authority, in an informal manner, could conduct spot checks to insure against it.⁴⁴

The limited empirical evidence available suggests that there is a general willingness by people throughout the world to report arms control violations. A 1958 public opinion survey conducted in the United States, Britain, West Germany, Japan, France, and India found that a large majority within each nation favored the idea of inspection by the people and said they would be willing personally to participate.⁴⁵ A

39. During a question-and-answer period, Mr. Khrushchev was asked by a scientist whether he would be willing to agree on turning the whole population into an inspection force, reporting any violation of disarmament to an international agency. The idea would be that populations of all countries would be educated to detect and report violations.

"I solemnly assure you on behalf of the Soviet government," Mr. Khrushchev said, "that I accept all that was set forth by the distinguished scientist here, and I am ready to undersign such a proposal at any time."

N. Y. Times, Sept. 27, 1960, at 19, col. 6. See also Bohn, *supra* note 1, at 362.

40. E.g., A. DALLIN, *supra* note 36, at 230-31 n. 10.

41. Z. L. ZILE, *supra* note 20, at 301-11 [Soviet laws]; and D. S. ARONOWITZ, LEGAL ASPECTS OF ARMS CONTROL VERIFICATION IN THE U.S. 164-75 (1965) [U.S. laws].

42. Such restrictions can be particularly effective in a society like that of the Soviet Union because the Party and the State are so intimately involved in everyday life and because the Party's internal disciplinary procedures are above the law of the State. Z. L. ZILE, *supra* note 20, at 321.

43. See p. 154 *supra*.

44. See L. SZILARD, *supra* note 2, at 58.

45. Evans, *An International Public Opinion Poll on Disarmament and "Inspection by the People": A Study of Attitudes Toward Supernationalism*, in S. MELMAN, *supra* note 1, at 231. Although the Evans study was done specifically to test Melman's idea, the questionnaire seems to have been poorly designed. The question used to gauge willingness to report was as follows:

If you, yourself, knew that someone in (name of country) was attempting to secretly make forbidden weapons, would you report this to the office of the worldwide inspection organization in this country?

Id. at 233. How many people interpreted "someone" to possibly include their own government or someone acting with government authority is not clear.

similar survey conducted in Norway in 1964 found that an overwhelming percentage of that country favored inspection by the people and were willing to cooperate personally.⁴⁶ Furthermore, the former study found that scientists and engineers, the group most likely to possess information of a violation, were more willing to participate than the population as a whole.⁴⁷

Although there is no similar data on Soviet public opinion, there is no reason to assume that the Soviet people and particularly Soviet scientists and engineers would be less favorably disposed toward this proposal.⁴⁸ It has even been argued that the autocratic nature of the Soviet system is likely to bring forth many more reporters of violations than would be found in the West.⁴⁹ Furthermore, there is a strong tradition of popular participation in law enforcement which might encourage such cooperation from within the Soviet Union.⁵⁰

Yet another objection to this plan for inspection by the people might be that the adversary proceedings suggested to determine the veracity of reports would be unacceptable to participating governments and unworkable. The forwarding of all reports about one country to an adversary power might involve the disclosure of information concerning legitimate military operations which are considered secret. Similarly, allowing an adversary power to be the sole judge of a nation's compliance and allowing it to require on-site inspection as the ultimate

46. Galtung, *supra* note 4, at 133.

47. Evans, *supra* note 45, at 242.

48. [S]ome research workers, particularly a certain breed of fundamental scientist, and regardless of nationality, like to feel that they are essentially pursuing their own interest (or those of a universal scientific community — the latter also incidentally being a basic Marxist concept) and are somewhat independent of mundane authority. As a result, such individuals tend to make their own rules of procedure, save when compelled to comply with someone else's regulations. It would seem, therefore, that at least a small proportion of the more idealistic (i.e., whether morally or scientifically so) research workers would constitute weak links in any vast secret development effort unless they were sufficiently intimidated by fear of possible punishment or had been chosen for fanatical patriotic or xenophobic tendencies, the latter qualities usually not being found in association with more creative mentalities.

Bowen, *supra* note 12, at 441. See also Szilard, *supra* note 35, at 84.

49. Pool, *supra* note 34, at 346; and Bowen, *supra* note 12, at 441-42.

50. See Z. L. ZILE, *supra* note 20, at 47-48; Ramundo, *The Comrade's Court: Molder and Keeper of Socialist Morality*, 33 GEO. WASH. L. REV. 692 (1965); O'Connor, *Soviet People's Guards: An Experiment with Civic Police*, 39 N.Y.U.L. REV. 579 (1964); and Berman and Spindler, *Soviet Comrades' Courts*, 38 WASH. L. REV. 842 (1963).

Generally, on the possibility of strengthening the human attributes which would encourage participation in inspection by the people and which run counter to warlike behavior see Szalita, *Some Comments on Psychological Aspects of Evasion and Disarmament*, in S. MELMAN, *supra* note 1, at 251 and Rabinowitch, *Responsibilities of Scientists in Our Age*, 25 BULL. OF THE ATOMIC SCIENTISTS 2, 3-26 (1969).

verification, it could be argued, builds in a danger of continuous controversy and the likelihood that the agreement will break down.

The changing nature of military secrecy has already been pointed out.⁵¹ In theory, avoiding continuous controversy and the likelihood of a breakdown in the arms control agreement should not be difficult. When an agreement is freely entered into by nations, it is logical to assume that they each see the agreement to be in their national interest and that they all desire that it remain in effect.⁵² Each nation would be concerned not only that others not violate the agreement but also that others be allowed to satisfy themselves that it had not done so.⁵³ Similarly, the adversary power would desire that the agreement remain in effect; and, therefore, it would not demand unreasonable proof to refute a report or attempt to infringe upon the legitimate security interests of the charged nation.⁵⁴

The problem with this analysis is that international politics does not regularly fit into such logical patterns. It is entirely conceivable, for example, that an adversary power might feel that on-site inspection was essential to refute a particular report while the charged nation was convinced that such inspection could serve no useful purpose other than espionage. Therefore, if inspection by the people is to further an arms control agreement rather than create continuous controversy, it is important that no more reliance be placed upon this verification technique than it can handle. Inspection by the people should at first be used primarily as an auxiliary to more conventional verification procedures which would provide primary assurance of compliance. As a working relationship developed among the parties for handling individual reports and as confidence developed in this procedure, greater reliance might be placed upon it.

51. See p. 160 *supra*.

52. See A. GOTLIEB, *supra* note 18, at 133; and Lyons, *Problems of Compliance Under Arms Control Agreements*, 7 J. CONFLICT RESOLUTION 351 (1962).

53. See Keeton and Schwarzenberger, *supra* note 29, at 222.

54. A detailed study of various arms control agreements entered into between 1919 and 1939 concluded as follows:

Careful examination of all factors, regarding the treaties under consideration, failed to reveal any meaningful relationship between supervision and compliance. It is true that the evidence submitted above would seem to indicate that an inverse ratio existed between those treaties utilizing a complex control system and the number of violations detected. That is, treaties employing a sophisticated system of inspection were more often violated than those agreements which left the matter of compliance to national integrity. The Versailles treaty, consequently, was plagued with far more violations than the Russo-Finnish pact of the naval agreements. However, the determining factor in this relationship was neither the controls nor compliance but the manner in which the agreement was arranged: if it was imposed, violations occurred; if it was mutually negotiated, it was relatively free of violations.

4 R. D. BURNS, *DISARMAMENT IN PERSPECTIVE: AN ANALYSIS OF SELECTED ARMS CONTROL AND DISARMAMENT AGREEMENTS BETWEEN THE WORLD WARS, 1919-1939*, at 20 (1968).

IV. A PROPOSAL

Because of the secrecy which surrounds the current Strategic Arms Limitation Talks between the United States and the Soviet Union, it is impossible to know what is being discussed and what the issues between the two powers are. It is possible to surmise, however, that the recent development of Multiple Independently-targeted Reentry Vehicles (MIRV) must be a topic under serious study. It is in the area of limitations and controls upon MIRV that the verification procedure of inspection by the people may be of immediate use.

MIRV is potentially the most destabilizing element in the nuclear arsenal yet developed. By increasing the capacity of strategic systems several fold while the number of launch vehicles remains fixed, MIRV conjures up the notion of a successful counterforce first strike. At present, the invulnerability of both United States and Soviet submarine-based missiles makes the notion of a successful first strike rather farfetched; yet it is clear that a world where deterrence depends primarily upon the fact that neither side has yet developed a submarine locating system is not as safe as a world without MIRV where numerous other calculations are involved.

The United States recently began deployment of Minuteman III missiles with MIRV warheads and is scheduled to begin deployment of Poseidon missiles, submarine-launched MIRV, in January, 1971.⁵⁵ The Soviets have begun testing MIRV, but it is estimated that they are several months from high confidence deployment.⁵⁶ Despite these developments, a complete ban on MIRV testing together with an agreement banning deployment may yet provide effective controls. A test ban could be verified by national means, and without further tests the Soviets could not develop sufficient confidence in their MIRV system for destabilizing deployment. Continued deployment in the "open" society of the U.S., the argument continues, could be detected by examination of Congressional debates, budget requests, procurement contracts, and the public press.⁵⁷ The problem is that neither side seems to have sufficient confidence in its intelligence estimates of the other's capacity or in its capacity to verify such an agreement by "national" means.⁵⁸

55. Wash. Post, Aug. 17, 1970, §A, at 22, col. 3.

56. Scoville, *supra* note 3, at 9-10.

57. *Id.* It should also be pointed out that a test ban would prevent further reliability and increased accuracy test by the U.S., thus further reducing the incentive for deployment.

58. Wash. Post, Sept. 16, 1970, §A, at 14, col. 4. In response to a question on the possibility of a MIRV test ban agreement, Secretary of State Rogers pointed out this problem:

In essence the problem of controlling MIRV is that conventional verification procedures are inappropriate for deployment detection. It is impossible to tell from satellite photography whether a missile has one or more warheads.⁵⁹ Even with on-site inspection, it is impossible to determine this from further than a few feet; and neither side is likely to permit such detailed inspection of its critical weapons.⁶⁰ Furthermore, since warheads might be changed for inspection purposes, it would be necessary for the on-site inspectors to have complete freedom of movement within the host country to arrange surprise spot checks — again, a rather remote possibility.⁶¹ Inspection by the people could be directed toward MIRV deployment, and it might provide the extra assurance to both sides necessary to induce an agreement.

Inspection by the people of a MIRV ban could operate within the context of a continuous SALT. The agreement which established this procedure could be periodically published in the public press of both nations. A small subcommittee of the SALT could disseminate appropriate propaganda, subject to veto by either nation. The security of the mails could be verified by each nation planting test mail within the other. Personnel could be borrowed from the staff of the United Nations Secretary General to receive and classify incoming mail. Reports received by each nation about the other's activities could be checked against intelligence gathered from other sources; and, if necessary, they could be raised as a topic for discussion at a formal SALT session or in an appropriate subcommittee. The test ban would be the primary assurance of Soviet compliance, and the "openness" of American society the primary assurance of United States compliance. If inspection by the people worked in this context it might fundamentally effect future United States-Soviet negotiations on arms control.

I doubt it very much, because it is very difficult to imagine how it could happen. We are not sure what stage they are in, and they are not sure what stage we are in; and if we proposed it too aggressively, they would think that we had completed our tests to the point where we didn't need any additional tests, and they would be naturally suspicious.

Interview with Paul Nivon, NET Washington correspondent, aired Nov. 26, 1969, reported in 61 STATE DEPT. BULL. No. 1591, at 582 (Dec. 22, 1969).

It might also be that the Soviets would not accept any agreement which left the U.S. in possession of more advanced MIRV technology, but as of now this is not clear.

59. Wash. Post, June 10, 1970, §A, at 11, col. 2.

60. Wash. Post, June 14, 1970, §B (Outlook), at 3, col. 5.

61. For a discussion of the Soviet attitude on the movement of foreigners within its borders see Z. L. ZILE, *supra* note 20, at 123-70.

