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The SALT Process and Its Use in Regulating Mobile ICBM's

In 1972, the United States and the Soviet Union concluded the first round of the Strategic Arms Limitations Talks (SALT I) with agreements limiting anti-ballistic missiles (ABM's) and creating interim limits on offensive nuclear weapons. This Note develops criteria for evaluating arms limitation agreements, and investigates the potential for using the SALT II agreements to regulate the deployment of land-based and air-based mobile intercontinental ballistic missiles (mobile ICBM's). It concludes that an agreement banning or limiting the deployment of mobile ICBM's would be in the best interests of the United States, and would be worth specified concessions on the part of this country. This conclusion, however, is dependent upon the strategic context in the foreseeable future, and must be made with reservations concerning the relative strengths of United States and Soviet forces.

I. The Process of Creating Law in SALT

Arms control is a process of agreement for mutual restraint or cooperative action between potential enemies, in order to reduce the likelihood of war, or the severity of war if it occurs. SALT is a specific arms control process aimed at maintaining world order by creating sanctions against the deployment of specified numbers and types of strategic nuclear weapons. The goal of SALT extends also to

3. World minimum order is defined as the effective prevention and repression of violence or coercion. See M. McDougal & F. Feliciano, Law and Minimum World Public Order 121-22 (1961) [hereinafter cited as McDougal & Feliciano].
4. Sanctions are techniques and strategies for supporting world order, involving the expectations and practices of reward or deprivation. They cannot be divorced from the context in which they operate because they are integral to it. Reisman, Sanctions and Enforcement, in S The Future of International Legal Order 275 (C. Black & R. Falk eds. 1971). See McDougal & Feliciano, supra note 3, at 287-88; M. McDougal, H. Lasswell & I. Vlasic, Law and Public Order in Space 404 (1963) [hereinafter cited as McDougal, Lasswell & Vlasic].
creating expectations⁵ that strategic weapons will not be used, and that appropriate sanctioning authority exists to discourage their use.⁶ In an important sense, all members of the international community are involved in the sanctioning process because they would all be affected by a nuclear war.⁷ Understanding this process is also important because similar sanctions will one day be needed to regulate technologies that pose much greater threats to world order.⁸

A. Sanctioning Objectives in SALT

Analysis of the legal process of SALT is facilitated by examining the process in terms of the five ordinary objectives of any sanctioning process: prevention, deterrence, restoration, rehabilitation, and reconstruction.⁹ The comprehensive realization of these objectives will achieve the broader goals of SALT.¹⁰

Prevention. Prevention is achieved by creating a preference among nations not to resort to violence or threats of violence in order to

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5. Expectations are assumptions about events wherever located in the continuum of time. McDOUGAL & FELICIANO, supra note 3, at 285.
6. The preamble to the ABM agreement reads in relevant part: [This agreement is made in consideration] that effective measures to limit antiballistic missile systems would be a substantial factor in curbing the race in strategic offensive arms and would lead to a decrease in the risk of outbreak of war involving nuclear weapons. Treaty with the U.S.S.R. on the Limitation of Anti-Ballistic Missile Systems, May 26, 1972, [1972, part 4] 23 U.S.T. 3435, T.I.A.S. No. 7503 [hereinafter cited as SALT Treaty].
7. The participants are not only states, but all individuals, groups and other entities. Many are participants not only because they are faced with extinction by nuclear weapons, but also because all who play effective roles in power processes in the world arena may participate in the process of sanctions. McDOUGAL & FELICIANO, supra note 3, at 281-82. For various effects of SALT upon nonparty states, see SALT: IMPLICATIONS FOR ARMS CONTROL IN THE 1970’s, supra note 1, at 199-312.
8. Threats to future order may come from technological advances that make possible weapons which are both less expensive and more difficult to detect than current strategic nuclear weapons, yet have the same human destructive capability. Examples include biological and chemical weapons, genetically oriented weapons, and weather-modification systems. Terminal guidance missiles (cruise missiles) are small nuclear missiles with self-correcting radar guidance systems, giving them extremely high accuracy. Although cruise missiles are still in the testing stage, if they are ever deployed, their smaller size and relatively low cost will make them more difficult to verify and hence more difficult to limit through arms control. Their extremely high accuracy will make them inherently counterforce weapons, for use against enemy missile silos rather than against civilian population centers (which would not require such high accuracy). If Soviet missiles were made vulnerable they might well be replaced with mobile weapons, triggering a new arms race and new threats to world order. K. Tsipis, OFFENSIVE MISSILES 27-28 (Stockholm Int’l Peace Research Institute Paper 5, 1975) [hereinafter cited as OFFENSIVE MISSILES]. The Department of Defense estimates that such weapons could be made operational in the late 1970’s. J. Schlesinger, ANNUAL DEFENSE DEPARTMENT REPORT FISCAL YEAR 1975, at 65 (1974) [hereinafter cited as ANNUAL DEFENSE DEPT’ REPORT FY 1975].
10. See McDOUGAL & FELICIANO, supra note 3, at 288.
work their will in international disputes. SALT is one of a long series of attempts to prevent conflict by regulating armaments. This objective is also implicit in Article I of the United Nations Charter, which urges "effective collective measures for the prevention and removal of threats to the peace" and Article 26 which requires that the Security Council promote and maintain peace by formulating plans for the reduction of armaments.

SALT attempts to prevent breaches of world order by creating a recurring dialogue between the United States and Soviet Union which will anticipate situations of force imbalances that would make the use of coercion attractive to one of the parties. An imbalance in force levels will affect the expectations of all states during periods of crisis. If one party anticipates that it will be at a strategic disadvantage in the future, it will be encouraged toward immediate coercive acts, before its posture becomes relatively weakened. Conversely, the position of strategic superiority could later be used to the stronger state's advantage.

Even if an imbalance is insufficient for one side to dominate the other militarily, it is possible for strategic imbalances to create diplo-

11. Id.
12. For a discussion of arms control prior to the League of Nations experience, see P. Noel-Baker, Disarmament (1926). For the experiences of the League, as well as other arms negotiations between the World Wars, see J. Wheeler-Bennett, Disarmament and Security Since Locarno 1925-1931 (1932); H. Wehberg, The Outlawry of War (1931). Arms negotiations since World War II are summarized in Congessional Quarterly, History of Disarmament in the Postwar Years (Special Rep. 1964); and discussed in B. Bechhofer, Postwar Negotiations for Arms Control (1961).
14. U.N. Charter art. 26 reads: In order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources, the Security Council shall be responsible for formulating... plans... for the regulation of armaments.
15. The preamble to the ABM Treaty in SALT I states the intention of "relaxation of international tension" and considers SALT's preventative intent as creation of an atmosphere where additional arms control is encouraged: [The parties make this agreement] [p]roceeding from the premise that the limitation of anti-ballistic missiles systems, as well as certain agreed measures with respect to the limitation of strategic offensive arms, would contribute to the creation of more favorable conditions for further negotiations on limiting strategic arms.
SALT Treaty, supra note 6. Sufficiency and parity of strategic forces and a credible second-strike ability must be perceived by each side in order to maintain a balance of interests. W. Clemens, The Superpowers and Arms Control 28 (1973).
16. This interdependence is illustrated by the importance attached in both SALT I and II to the status of the United States forces stationed in Europe. The ultimate disposition of this issue will seriously influence both the European governments and the NATO alliance. Frye, Untying the SALT Knot, Wash. Post, Nov. 10, 1974, at C3, col. 1; Kemp & Smart, Salt and European Nuclear Forces in SALT: Implications for Arms Control in the 1970's, supra note 1, at 199-236.
18. Balanced force levels, if the balance is stable, will prohibit preemptive attacks. Id. at 232.

1080
matic or ideological leverage. This leverage would include propaganda or the advantage of a superior bargaining position in future arms negotiations. The relative strengths of the U.S. and U.S.S.R. would affect their prestige in the international community if one had a substantially lower, albeit militarily sufficient, strategic force level. There is also a domestic political cost involved, since leaders of both countries want their military to be "second to none."

There are various pressures working upon both the United States and Soviet Union which tend to create imbalances. Each side continues to develop weapons because it fears having a weaker force than the other. There is also concern that an advantage in strategic technology might have spin-off uses in nonstrategic weapons. SALT can lessen these potential imbalances by banning specified new weapons systems, thus reducing the incentive to develop new technologies.

Another pressure which may cause imbalances is the desire of both the U.S. and U.S.S.R. to maintain flexible responses to violations of world order. Some flexibility is necessary in order for responses to be proportionate to the violation. If disproportionate responses are not available, world order is jeopardized because violations might escalate if met inappropriately. Imbalances will result, however, if the new weapons or practices which are developed for flexibility in responding also create new potential for initiating coercion. The SALT dialogue

19. "Neither the USSR nor the United States has, or can hope to have, a capability to launch a disarming first strike against the other ...." ANNUAL DEFENSE DEPT REPORT FY 1975, supra note 8, at 4. Diplomatic coercion employs communications and negotiations between leaders or officials in various states. Ideological coercion uses manipulation and circulation of symbols and propaganda to influence patterns of expectations and demands in target audiences. McDougal & Feliciano, supra note 3, at 28-29. Situations of force imbalances, because of their diplomatic or propaganda potential, create expectations of value gain from coercion. The amount of imbalance necessary to create ideological, diplomatic or economic advantage is hotly debated. A. QUANBECK & B. BLECHMAN, STRATEGIC FORCES: ISSUES FOR THE MID-SEVENTIES 10 (1973) [hereinafter cited as QUANBECK & BLECHMAN]. There is no doubt, however, that nuclear weapons pose many threats other than their use in a massive attack. ANNUAL DEFENSE DEPT REPORT FY 1975, supra note 8, at 27.

20. The preamble to the ABM Agreement, by recognizing that SALT I would contribute to favorable conditions for additional arms control, implicitly recognizes the necessity of balanced forces if effective force limitations are to be implemented. See note 13 supra. This relationship and the current imbalance in MIRV levels has been a source of pessimism over possible SALT II MIRV limitations. OFFENSIVE MISSILES, supra note 8, at 30-32.

21. For example, President Nixon once stated that "[w]e must never allow America to become the second strongest nation in the world." STOCKHOLM INT'L PEACE RESEARCH INSTITUTE, WORLD ARMSMAMENTS AND DISARMAMENT YEARBOOK 1974, at 70-71 (1974).

22. See Long, Growth Characteristics of Military Research and Development, in IMPACT OF NEW TECHNOLOGIES ON THE ARMS RACE 279 (B. Feld, T. Greenwood, G. Rathjens & S. Weinberg eds. 1971). No technological development will have an easily defined impact. It is difficult, for example, to classify space technology as having unequivocal uses. McDOUGAL, LASSWELL & VLASIC, supra note 4, at 388.

23. See generally SIPRI YEARBOOK 1972, supra note 1, at 47.

is a means of avoiding these imbalances through the regulation of the flexible responses. If military responses are developed, the SALT dialogue can identify and control their coercive potential. SALT can also help to create nonmilitary methods of response which are truly responses and do not carry potential for initiating military coercion.

A final pressure which may cause imbalances is not international in origin, but arises from each side's bureaucracy. There are pressure groups in both nations which constantly advocate new weapons programs. If a state has a slightly weaker strategic force, or if such a weakness is anticipated, the pressures to increase armament levels may become irresistible.

There are three problems with SALT's attempt at prevention. First, SALT does not address itself to the whole of preventive requirements for world order; there are still far too many pressures operating on each side which make it desirable to gain even limited strategic superiority. Even if both the United States and Soviet Union pursue a policy of essential equivalence with respect to their strategic weapons, there are still a great many areas of international conflict and bureaucratic pressure which create incentives for new weaponry in order to obtain transitory strategic superiority. While attempting to control all the forces leading to hostility between the two nations may be outside the scope of discussions on strategic weapons, the goal of prevention will never be reached until the negotiations include controls over the underlying causes of force imbalance.

Second, attempts at prevention are discouraged because of the difficulty in negotiating the disparate arsenals of the United States and

25. For examples of nonmilitary methods of prevention in SALT, see the discussion of the substantive agreements concluded at SALT during 1971 in SIPRI YEARBOOK 1972, supra note 1, at 36-37.

26. Although economic or diplomatic sanctions might escalate into military confrontation, their availability does not amount to a new military threat with potential for causing imbalances. Multiple-warhead missiles (MIRV's) are an example of a military response, developed for deterrence, which can cause imbalances. See p. 1083 infra. Any strategic policy which places exaggerated emphasis on the military instrument to the exclusion of others is suspect. McDougal, Lasswell & Vlasic, supra note 4, at 422 n.165. Reliance upon only one possible military response within the military instrument would be worse. The debate between strategies of "massive retaliation" versus "flexible response" was resolved in favor of the latter during the 1950's. But see Aron, The Evolution of Modern Strategic Thought, in PROBLEMS OF MODERN STRATEGY 23 (Stud. in Int'l Security No. 14, 1970). Recent U.S. policy has emphasized creating flexible strategic potential to provide military and psychological deterrence. Finney, Debate Over Change on Nuclear Strategy, N.Y. Times, Jan. 22, 1974, at 10, col. 1.


29. See McDougal, Lasswell & Vlasic, supra note 4, at 486-87.
The SALT Process

Soviet Union\(^ {30} \) into two strategic forces whose capabilities are essentially equivalent. In general, the United States strategic force has more warheads, technical sophistication and accuracy, while the Soviet force has more launchers and larger warheads.\(^ {31} \) In order to define equivalence it has been necessary to develop common denominators among weapons so that they can be compared.

Reconciliation of forces with differing capabilities is a recurring problem in attempts at arms control. The proper method of comparing different types of forces is not only to measure the relative destruction or “kill” ratios, but also to focus on allowing force levels which reflect strategic needs.\(^ {32} \) The strategic equivalence equation should not only include factors such as missile accuracy, and the number and size of warheads, launchers and MIRV’s, but should also reflect each state’s perception of its needs.\(^ {33} \) The United States should be prepared to make concessions to the Soviets depending on our relative strategic needs. While the critical problem is to establish a method of comparison, the answer is not to assume that equivalence is necessary or that a single number can be determined for prolonged use. The solution is contextual: each nation must be allowed a force sufficient to fill its strategic needs, which are different in every case.\(^ {34} \)

Earlier arms control efforts in the Washington Naval Treaty of 1922 and the London Naval Treaties of 1930 and 1936 encountered similar problems in an attempt to find a means of equating disparate weapons forces.\(^ {35} \) Like the offensive weapons agreement in SALT, the Washington and London Treaties placed numerical limits on force levels without actually banning whole weapons systems.\(^ {36} \) The treaties set limits for ship tonnage which were sufficiently high to allow for

30. SIPRI Yearbook 1973, supra note 1, at 52-54.
32. The trend in SALT has been much the opposite. Numerical concessions were made in SALT I by the United States in consideration of its qualitative superiority, but in general both sides have seen throw-weight imbalances or potential imbalances as justification for building new weapons. See Offensive Missiles, supra note 8, at 30.
34. Id. at 27-28.
35. The Washington conference ratios gave Britain and the United States “parity” of naval cruiser force levels while the Japanese were allowed three-fifths of this level. Comparisons were made on the basis of tonnage and combat effectiveness. See generally Conference on the Limitation of Armament: Washington, November 12, 1921-February 6, 1922, at 446-57 (1922); R. Buell, The Washington Conference 143, 153-63 (1922); Y. Ichihashi, The Washington Conference and After 46-59 (1928). In 1938 the London Conference extended the agreement between the United States and Great Britain, while the Japanese were allowed to increase their force levels. Bull, supra note 35, at 58. See generally Documents of the London Naval Conference 1935, at 5-24 (1936); L. Morgan, The Background of the London Naval Conference 66-67 (1930).
changes in force levels in response to changes in perception of strategic and economic needs, resulting, for example, from the Depression or the rise of Nazi Germany. There were differences, as well, within the series of treaties because of changing strategic needs. In 1921, before the Washington Treaty, Britain had a clearly superior navy while the United States Navy was expanding at a much faster pace. The 1922 Washington Treaty allotted the United States and Great Britain equal tonnage in battleships and cruisers. In 1930, however, parity was maintained by allowing the British more tonnage in light cruisers, because they needed them to protect their worldwide maritime empire, while the Americans were given a corresponding advantage in heavy cruisers. Thus, through sufficient flexibility in responding to changing needs and through periodical renegotiation, the Washington and London Naval Treaties successfully limited ship construction (hence, budget outlays for the military) for 15 years, until political developments apart from the treaties led to the outbreak of World War II. These treaties illustrate that arms control is a continuous process, and that forces should not be compared on the basis of fixed ratios over long periods of time.

The third factor which frustrates SALT’s attempt at prevention is the uncertainty of scientific advances which might be translated into weapons breakthroughs. Since both the United States and the Soviet Union already possess weapons forces with assured massive destructive capability, it is unlikely that new nuclear weapons which are directed against civilian populations will create dramatic imbalances between our forces. It is more likely that new weapons which are directed against enemy missiles (counterforce weapons) will be developed. Counterforce weapons create imbalances by destroying the ability to retaliate against nuclear attack. Military strategy which relies on counterforce ability is dubious, however, because of the large numbers of diverse weapons that would have to be destroyed to make such a strategy successful. Submarine-launched missiles, for example, are currently invulnerable to preemptive attack, and will remain so for the

37. Bull, supra note 33, at 45.
38. Id. at 31.
39. Id. at 32.
40. Id. at 36, 42.
41. Id. at 45.
42. Dyson, Arms Control and Technological Change, in SALT: Problems and Prospects, supra note 1, at 201-19; Rathjens, Introduction: Technology and the Arms Race—Where We Stand, in Impact of New Technologies on the Arms Race, supra note 22, at 1.
44. Offensive Missiles, supra note 8, at 9-10.
The SALT Process

foreseeable future. Even if there were sudden technological breakthroughs in anti-submarine warfare, the lead time for development, testing, and deployment would be considerable, during which time other nations could react.

The evolution of more accurate weapons, however, does pose a significant counterforce threat to immobile land-based missiles. Either a highly accurate multiple warhead missile (MIRV) or missiles with terminal guidance could seriously threaten the retaliatory capability of immobile missiles. While this would not be a viable military strategy because submarine-launched missiles and bombers would still provide retaliation, the situation which results would cause imbalances in force levels between the United States and the Soviet Union. This imbalance would increase the chances of diplomatic or ideological coercion, and would spur each country's bureaucracy to urge new weapons systems to reestablish equivalence. These results, either new coercion capability or a new arms race, create potential for instability and violations of world order.

Deterrence. The second objective of the sanctioning process in SALT is to deter violations of world order by creating expectations that any use of coercion will be met by reciprocal response. This is related to the goal of prevention except that here the concern is to counteract immediately posed threats. Military deterrence is the basic precept and most common goal of strategic planning; forces are deployed so that in response to any eventuality there is a guarantee of inflicting an unacceptable level of damage. Even though major attention has focused for years on military deterrence, expectations of diplomatic,

47. See Annual Defense Dep't Report FY 1975, supra note 8, at 57.
48. Offensive Missiles, supra note 8, at 27-28. The major criterion for an effective counterforce weapon is high accuracy since the blast wave from current nuclear weapons (counterforce weapons) is insufficient to destroy an enemy silo unless it explodes very close to the target. Id. at 11-12.
49. See pp. 1090-81 supra.
50. World order violations would be encouraged because the instabilities give a violator the opportunity to realize objectives through coercion. See McDougal & Feliciano, supra note 3, at 14-15.
51. Deterrence involves persuasively communicating to a potential violator that any violation of world order will meet a response of sufficient magnitude to make the violation unattractive. Id. at 291. See generally McDougal, Lasswell & Vlasic, supra note 4, at 469.
52. Id. at 467. The United States has several times more strategic forces than necessary to cause unacceptable damage to the U.S.S.R.
ideological, and economic responses\textsuperscript{54} to the use of nuclear weapons for coercion also have a deterrent effect; there is a definite need for a shift in focus and for consequent efforts to improve the effectiveness of nonmilitary sanctions.\textsuperscript{55} The United Nations would be only one of the available forums for such a reaction.\textsuperscript{56}

The focus of SALT’s attempt at deterrence is to assure that reciprocal responses are available, and that all parties are aware of their availability and certain use.\textsuperscript{57} The ABM Treaty makes a military response to coercion more certain, since it limits systems which can intercept retaliatory missiles.\textsuperscript{58} The rationale of the interim limits on offensive weapons is to keep each side’s launchers and warhead strengths comparable, assuring that a situation will never exist where one side cannot retaliate.\textsuperscript{59}

SALT’s creation of a Standing Consultative Commission also provides a nonmilitary source of deterrence.\textsuperscript{60} The Commission was established to implement the provisions of the Treaty and create procedures for compliance.\textsuperscript{61} The Commission considers any ambiguities or questions of compliance, including possible violations, interference with verification, changes in the strategic situation, and the need for changes in the Treaty to increase its viability.\textsuperscript{62} The Commission provides a new diplomatic channel of communication, and a forum for resolving disputes which might otherwise lead to disruptions of world order. The Commission aids in deterrence by allowing either party to express its intentions of responding to perceived Treaty viola-

\textsuperscript{54} Diplomacy can be used to inform a potential violator of the consequences of violating world order. McDougal, Lasswell & Vlasic, supra note 4, at 423. Ideology can be used when a violation is imminent, to undermine public support for the violator and create public support for the sanctioner. Id. Economic sanctions which can be used for deterrence include stopping trade, withholding foreign aid, reducing or refusing credits or loan payments, freezing assets in the sanctioning state owned by the violator state or its citizens, and terminating all economic relationships. Id. at 424; Sohn, supra note 24, at 374.

\textsuperscript{55} The strength of the deterrent will vary contextually. If the violator state is relatively small and not allied with a large bloc of states, economic sanctions should result in compliance. Sohn, supra note 24, at 374. A superpower state which strongly supports a violation will be less likely to be persuaded. Id. This is hardly surprising and does not mean that nonmilitary sanctions are ineffective against powerful states. States, no matter how powerful, will be deterred from violations of world order if their expectations of improving their position are maximized by avoiding violations. McDougal & Feliciano, supra note 3, at 286.

\textsuperscript{56} See A. Gotlieb, Disarmament and International Law 154-56 (1965).

\textsuperscript{57} Thus intelligence is necessary to spread the information that deterrence is available. See McDougal & Feliciano, supra note 3, at 351; Schelling & Halperin, supra note 2, at 34.

\textsuperscript{58} SIPRI Yearbook 1973, supra note 1, at 16-18.

\textsuperscript{59} Id. at 18.

\textsuperscript{60} SIPRI Yearbook 1973, supra note 1, at 15.

\textsuperscript{61} See Article XIII of the ABM Treaty and Article VI of the Interim Agreement on Offensive Weapons, SALT Treaty, supra note 6.

\textsuperscript{62} SIPRI Yearbook 1973, supra note 1, at 15.
The SALT Process

tions, and creating the expectation that violations will be challenged.63

The problem with SALT's attempt at deterrence is that the strategies
for obtaining this objective are perceived too narrowly. Deterrence will
not be adequately achieved unless SALT embraces all possibilities for
employing deterrent sanctions so as to discourage potential violators
of world order.64 Moreover, these sanctions must apply to other na-
tions besides the United States and the Soviet Union.65 Deterrence
is too often considered as a military function between two strategic
forces, rather than a general sanctioning objective of the entire world
community.66 SALT has made progress toward broadly designed de-
terrence, but it needs to incorporate more nonmilitary strategies.67

Restoration. The third sanctioning objective of arms control agree-
ments involves provisions for taking actions which will aid in the
restoration of world order after that order has been challenged.68
Responses to violations of world order must be immediate and appro-
priate to be successful in restoration.69 The Standing Consultative
Commission and the SALT negotiations themselves create new chan-
nels for diplomatic response to acts of coercion. The resulting agree-
ments help restore order by maintaining balanced force levels which
assure capability for military reciprocity.

Restoration has not been an explicit objective of SALT because
violations of world order using nuclear weapons are often considered
to end only in massive and widespread destruction. There are two
cases, however, where this would not be true. The first occurs when
the violation consists only of a few missiles being fired; the second
occurs when no missiles are fired, but their destructive potential is
used for coercion. In either of these situations it would be best to

63. See McDougal, Lasswell & Vlasic, supra note 4, at 495, 497.
64. In particular, the SALT attempt at deterrence has focused upon avoiding situations
where either party has incentive toward coercion, rather than reducing the coercive
ability. See McDougal, Lasswell & Vlasic, supra note 4, at 470; SIPRI Yearbook 1973,
supra note 1, at 16-17.
65. There are numerous discussions of the effect of the SALT Treaty upon other
nations. See SALT: Implications for Arms Control in the 1970's, supra note 1, at 199-
312; SALT: Problems and Prospects, supra note 1, at 136-200. Bringing other nuclear
powers into arms control negotiations and agreements is necessary to accomplish dis-
armament or to have effective arms limitation among states, but this could be done
through new negotiations as well as through SALT. Kinter, Arms Control for a Fire-
Power World, in SALT: Implications for Arms Control in the 1970's, supra note 1, at
170.
66. McDougal, Lasswell & Vlasic, supra note 4, at 422 n.165.
67. Id.
68. McDougal & Feliciano, supra note 3, at 293-94; see McDougal, Lasswell &
Vlasic, supra note 4, at 425-32.
69. Sohn, supra note 24, at 179, 194-95. See generally Schelling & Halperin, supra
note 2, at 11-74.

1087
terminate the coercion without further escalation.\textsuperscript{70} Future SALT discussions should give greater attention to the goal of restoration by creating new and more flexible methods of response.\textsuperscript{71}

\textit{Rehabilitation and Reconstruction}. Rehabilitation is the objective of the sanctioning process concerned with reestablishing world order and values after a violation.\textsuperscript{72} Whereas restoration is concerned with taking action to stop violations of world order, rehabilitation is concerned with the resumption of normal community processes with a minimum of economic and social disturbance.\textsuperscript{73} Reconstruction entails efforts made after a violation to prevent it from happening again.\textsuperscript{74} Like the objective of restoration, these objectives are often slighted because violations of world order where strategic arms are involved are too often considered to be acts of massive, worldwide destruction. Such destruction is not necessarily the consequence of nuclear coercion and future SALT agreements should create procedures for rehabilitation and reconstruction of world order in cases of limited nuclear attack, accident, or other coercive action.\textsuperscript{75}

\textbf{B. The Role of Verification}

The SALT agreements also provide that neither party shall deliberately conceal weapons, and stipulate "national means of verification" (primarily satellite surveillance) to ensure treaty compliance.\textsuperscript{76} The SALT agreement on verification systems is crucial to deterrence

\textsuperscript{70} See Sohn, supra note 24, at 179; McDougal & Feliciano, supra note 3, at 293. The Treaty violations could occur in various modes and intensities. See generally Barnet, \textit{Violations of Disarmament Agreements}, in \textit{Security In Disarmament}, supra note 24, at 157-77.

\textsuperscript{71} See A. Gotlieb, supra note 56, at 156-62; Sohn, \textit{Adjudication and Enforcement in Arms Control}, in \textit{Arms Control, Disarmament and National Security} 375-75 (D. Brennan ed. 1961).

\textsuperscript{72} McDougal & Feliciano, supra note 3, at 294-95.

\textsuperscript{73} Id. at 293-95.

\textsuperscript{74} Id. at 295-96; see Sohn, supra note 24, at 180-92, 194-202.

\textsuperscript{75} Barnet, supra note 70, at 162; see A. Gotlieb, supra note 56, at 162; Sohn, supra note 71, at 375.

\textsuperscript{76} Article XII of the ABM Treaty provides:

1. For the purpose of providing assurance of compliance with the provisions of this Treaty, each Party shall use national technical means of verification at its disposal in a manner consistent with generally recognized principles of international law.

2. Each Party undertakes not to interfere with the national technical means of verification of the other Party operating in accordance with paragraph 1 of this article.

3. Each Party undertakes not to use deliberate concealment measures which impede verification by national technical means of compliance with the provisions of this Treaty. This obligation shall not require changes in current construction, assembly, conversion, or overhaul practices.

The SALT Process

because it signals the acceptance of a mutual ability to inspect and verify that the Treaty has not been violated.\textsuperscript{77} The United States has always taken the position that verification is a prerequisite to arms control.\textsuperscript{78} Thus a preliminary or adjunct to any type of successful arms negotiation has been the success of a separate agreement, implicit or otherwise, which ensures to a high probability that violations will be detected.\textsuperscript{79}

Verification systems do not necessarily aid in the establishment of world order since the information obtained could be used to plan an attack as well as to verify treaty compliance.\textsuperscript{80} Verification coupled with weapons limits, however, creates deterrence if both sides have weapons systems with assured retaliatory potential. The verification information then becomes a communication of the other side's deterrent threat.\textsuperscript{81} Since verification creates a high probability of certainty that violations will be detected, any violations which might lead to breakdowns in world order are discouraged.\textsuperscript{82} Verification also serves the goal of deterrence by creating stability during periods of crisis. Again, if both sides' force levels have retaliatory ability, an ability communicated to the other side through its verification system, neither side will feel compelled to attack in fear that otherwise it will be the victim of a preemptive attack.\textsuperscript{83}

Finally, the effect of the verification provision of the SALT agreement is to provide diplomatic and ideological impact to verification

\textsuperscript{77} Verification has often been a preoccupation of both Soviet and United States strategic planners. Absolute certainty in verification, however, while usually preferable, is neither necessary nor always possible. If a state cannot, or does not intend to develop a certain weapon, it is possible that the state would be willing to enter into an agreement regulating that weapon, even if it could not verify the agreement. See Chayes, \textit{supra} note 27, at 946-47.

\textsuperscript{78} See H. Kissinger, \textit{Nuclear Weapons and Foreign Policy} 176-79 (3d ed. 1969); SIPRI Yearbook 1973, \textit{supra} note 1, at 60.

\textsuperscript{79} See H. Kissinger, \textit{Nuclear Weapons and Foreign Policy} 176-79 (3d ed. 1969); SIPRI Yearbook 1973, \textit{supra} note 1, at 60.

\textsuperscript{80} Schelling \& Halperin, \textit{supra} note 2, at 36.

\textsuperscript{81} For example, during the Cuban missile crisis, the mood of seriousness and determination in the United States was communicated through troop movements and other preparations. What was first expressed to the Soviets through means of their verification channels was later given to them through diplomatic communication. Falk, \textit{The Cuban Missile Crisis}, in \textit{Security in Disarmament}, \textit{supra} note 24, at 147-49. Similarly, the way we equip our armed forces or deploy our nuclear weapons will reveal our intentions to the Soviets. Schelling \& Halperin, \textit{supra} note 2, at 81.

\textsuperscript{82} Violations, to be worthwhile, would have to give the violator sufficient advantage to compensate for the risk of the sanctions that would be imposed if the violation was detected. Satellite surveillance gives substantial, but incomplete, information concerning each side's military operations. This information is sufficient to assure there are no violations adequate for military advantage. Rathjens, Chayes \& Ruina, \textit{supra} note 27, at 57; cf. Falk, \textit{The Limitations of Inspection for Drastic Disarmament}, in \textit{Security in Disarmament}, \textit{supra} note 24, at 225-39.

\textsuperscript{83} This process uses verification to communicate the balance of destructive power and the stability of that balance. \textit{The Strategy of Conflict}, \textit{supra} note 17, at 232.
information.84 The technical ability to verify through the use of reconnaissance photography was not created by SALT, but the information obtained has been given new authority and diplomatic effect.85 Not only does each side know that the other has the ability to detect violations, but both have agreed that such reconnaissance is occurring and that it is the primary method of detecting violations.86 The information thus obtained will constitute more persuasive evidence of a violation and have greater effect on world opinion.87 Similarly, the Treaty provision effectively precludes either party from denying its violations on the basis that satellite information is unpersuasive or illegally obtained.88

II. The Mobile ICBM Debate

Mobile ICBM's are ballistic missiles which can be moved on railcars, truck-beds, or airplanes and quickly readied for firing between continents.89 The major difference between mobile ICBM systems and current ICBM systems is that the mobile missiles cannot be easily monitored by satellite reconnaissance and therefore are less vulnerable to enemy attack. In 1972, the United States urged that the SALT I Agreement also limit mobile ICBM's, but the Soviets would not agree.90 The United States then unilaterally declared that the deploy-

84. Besides being imperfect, satellite information cannot apply sanctions by itself. Political and bureaucratic forces are necessary for application, and are thus the most important inducements to compliance in the context of extensive but incomplete information. Rathjens, Chayes & Ruina, supra note 27, at 57. See Pool, Public Opinion and the Control of Armaments, in Arms Control, Disarmament and National Security, supra note 71, at 333-46.

85. Greenwood, supra note 76, at 24. Pre-satellite, non-national means of verification were challenged as illegal by both the United States and the Soviet Union. See H. H. Berman & P. Maggs, Disarmament Inspection Under Soviet Law (1967); L. Henkin, Arms Control and Inspection in American Law (1958). There has never been substantial doubt as to the legality of satellite verification in the United States. D. Aronowitz, Legal Aspects of Arms Control Verification in the United States 140 (1969).

86. SIPRI Yearbook 1973, supra note 1, at 60.

87. See generally Pool, supra note 84, at 338.

88. See SIPRI Yearbook 1973, supra note 1, at 15. The present situation can be favorably contrasted with that in which verification information obtained by U-2 reconnaissance entailed legal problems when used as evidence for the application of sanctions. See Falk, Respect for International Law and Confidence In Disarmament, in Security In Disarmament, supra note 24, at 214.

89. See generally Quanbeck & Blechman, supra note 19, at 38. This Note does not include submarine launched missiles within its discussion of mobile weapons because of three distinguishing characteristics of submarine launched missiles. First, satellite reconnaissance can verify submarine deployment by monitoring support facilities and submarine construction. Second, submarine missiles are already extensively deployed and their prohibition is not now contemplated. If prohibition were attempted, the fact that submarine based missiles are already deployed would create a different set of problems. See generally SIPRI Yearbook 1972, supra note 1, at 47. Third, submarine launched missiles have always been treated separately from other mobile missiles in SALT negotiations. See generally The Future of the Sea-Based Deterrent, supra note 45.

90. T. Moor, supra note 31, at 16.
The SALT Process

ment of mobile ICBM's was inconsistent with the objectives of the Agreement. Subsequently, however, both the United States and the Soviet Union have proceeded with research and development of new mobile weapons. The United States has continued, however, to state its preference for limiting mobile weapons, making it likely that there will be efforts to include mobile ICBM limitations in the SALT II Treaty in June 1975.

A. General Arguments Favoring Mobile ICBM's

Arguments favoring mobile ICBM deployment in both the United States and Soviet Union emphasize the objectives of prevention and military deterrence, based on the maintenance of balanced force levels. The Soviet Union perceives that its immobile land-based forces are threatened by United States technological advances in high accuracy warheads which might be used to attack Soviet missile installations. The Soviets feel that they are confronted by a disadvantageous imbalance in strategic forces, and seek to reestablish a balanced position by deploying mobile ICBM's which would not be as vulnerable to an attack by high accuracy weapons, because they are not fixed targets. The United States perceives the Soviet unilateral deployment of mobile ICBM's as itself causing an imbalance in force levels, and seeks to avoid that imbalance by deploying mobile systems of its own. Thus technological advances have led to a situation in which there are arguments in both states to view deployment as a means of maintaining balanced forces.

Imbalances can also be caused by economic and bureaucratic consequences of deployment, which create reasons to deploy mobile weapons even if there is no strategic need for them. Mobile ICBM deployment would require massive expenditures which would stimulate the economy, provide jobs for domestic workers, and create profits for defense industries. These economic benefits would generate their own bureaucratic momentum for deployment. The vulnerability of fixed-position ICBM's could also prove to be a political handicap to leaders responsible for maintaining national security. None of these

91. Id.; ANNUAL DEFENSE DEPT REPORT FY 1975, supra note 8, at 56.
92. ANNUAL DEFENSE DEPT REPORT FY 1975, supra note 8, at 56-57. The amount the United States now spends on mobile ICBM's is not large; it is significant because if it leads to deployment, mobile ICBM's will consume a large portion of our defense budget. QUANBECK & BLECHMAN, supra note 19, at 98.
93. See ANNUAL DEFENSE DEPT REPORT FY 1975, supra note 8, at 56.
arguments, however, are conditioned upon whether the mobile systems are really necessary to maintain world order. The economic advantages will occur even if the weapons are not necessary. Similarly, there may be a political cost to a leader who decides not to build mobile systems, even if it is a correct decision.\textsuperscript{95} If either the United States or the Soviet Union deploys mobile weapons because of these pressures, however, the resulting force imbalance would cause the other state to respond by deploying mobile weapons of its own.

Another argument favoring deployment is that bargaining positions in SALT negotiations will be improved if mobile weapons can be used as "bargaining chips." This argument contends that each side in the SALT negotiations feels it can wrest more concessions from the other if it offers to limit a mobile ICBM system that is already deployed, as opposed to foregoing a potential system. The use of bargaining chips would improve the effort toward prevention if their use makes SALT agreements more likely to occur. The United States may develop mobile weapons in order to have something to bargain with in SALT II.\textsuperscript{96} In this case, the United States' activities would have value as a bargaining chip only if the Soviets have some interest, on balance, in avoiding a situation where both sides independently deploy mobile weapons.\textsuperscript{97}

B. Special Soviet Considerations Favoring Mobile ICBM Deployment

The Soviet Union has been more reluctant than the United States to limit mobile ICBM's because their current forces are facing a greater threat of preemptive attack. The United States' strategic missiles are more accurate and the number of warheads it can deliver is larger because of its lead in multiple-warhead technology.\textsuperscript{98} Moreover, the Soviets have a larger proportion of their total strategic force invested in land-based ICBM's.\textsuperscript{99} Thus the Soviets face a greater threat to a relatively larger portion of their forces, and their incentive to deploy mobile weapons is correspondingly increased.

\textsuperscript{95} \textit{See generally RATHJENS, CHAYES & RUINA, supra note 27, at 53.}
\textsuperscript{96} \textit{See generally SIPRI Yearbook 1973, supra note 1, at 16.}
\textsuperscript{97} Theoretical problems in constructing weapons strategies include the difficulty of anticipating the opponent's values. \textit{See The Strategy of Conflict, supra note 17, at 117.}
\textsuperscript{98} \textit{Offensive Missiles, supra note 8, at 20-21.}
\textsuperscript{99} The United States has 1,710 launchers, 1,054 of which are ICBM's. The Soviet Union has 2,075 launchers, 1,618 of which are ICBM's. \textit{Offensive Missiles, supra note 8, at 20; T. MOORE, supra note 31, at 10. The Soviets will probably substitute submarine launched missiles for some of their older ICBM's, however, as they are allowed to do under the SALT I Interim Agreement. Id. at 12.}
A second special factor in considering Soviet incentives to deploy mobile weapons is the bureaucratic structure of the Soviet command. Unlike the United States, the U.S.S.R. has designated a separate branch of their armed services to operate their land-based ICBM’s. If these weapons become obsolete because of U.S. ability to destroy them in a preemptive strike, an entire branch of the Soviet armed services would also become obsolete. Thus there are pressures for giving the Soviet missiles mobility in order to maintain the viability of that branch of the armed forces, even if the Soviets’ other interests were best served by avoiding deployment.

C. Arguments Opposing Mobile ICBM Deployment

Opposition to deployment stems, first, from three characteristics of mobile ICBM’s which make them an undesirable method of achieving sanctioning objectives; second, from the belief that deployment would defeat attempts at prevention because arms control would be made more difficult; and third, because deployment is not necessary to provide military deterrence. The first of the three undesirable characteristics is that a mobile ICBM system would be more expensive than conventional land-based strategic forces. Not only would there be costs for research and development, but the expense of building new missiles and launchers would be huge. Mobile ICBM’s would also need much more extensive support facilities than conventional ICBM’s, because of their mobile character.

Second, mobile ICBM’s are intrusive. The fact that they will be moved from one location to another means that more people would have the missiles stationed near them, or at least traveling nearby. This becomes a key factor in favor of the U.S. method of using airplanes to launch the missiles, since putting missiles on already existing airbases would not intrude upon civilians. Such placement partially defeats the purpose of mobile weapons, however, since the grouping of missiles on airbases would make them easier targets for preemptive attack.

102. The exact costs of mobile ICBM deployment are dependent upon the scale and method of deployment. The indications are that the costs would be very large. Coffey, American Interests in the Limitation of Strategic Armaments, in SALT: THE IMPLICATIONS FOR ARMS CONTROL IN THE 1970’s, supra note 1, at 79; QUANBECK & BLECHMAN, supra note 19, at 38.
103. There is no doubt that the Soviet Union has the ability to destroy nearly all of the more than 40 bomber and tanker bases in the United States. Hearings on Dept of Defense Appropriations for 1972 Before a Subcomm. of the House Comm. on Appropriations.
Third, the deployment of mobile ICBM’s would create serious security problems because protecting the missiles from theft would be more difficult. Theft of a missile might lead to blackmail and the feats the purpose of mobile weapons, however, since the grouping of destruction of a city. To the extent that the security protecting the missiles is increased, their obtrusiveness would also increase.

A broader and more important reason opposing mobile ICBM deployment is that deployment would defeat attempts at prevention by frustrating efforts to limit strategic offensive forces. Information on the location of ICBM’s can be obtained by satellite reconnaissance, but there is a time lag while the information is retrieved and analyzed. If portions of the observed state’s forces are being moved at all times, the missiles can never be accurately counted. To the extent that verification is a prerequisite to arms control, the likelihood of limiting mobile weapons is reduced.

Although the exact number of mobile ICBM’s could never be ascertained once they are deployed, there would still be potential for arms limitation that is not predicated upon precise verification. A reliable estimate of the number of deployed mobile ICBM’s could be made on the basis of the size of the support facilities, or on approximations of the total number of mobile ICBM’s as a multiple of those which are observed by satellite. Through these methods, general limits placed on mobile ICBM’s could be enforced. Nonetheless, despite the workability of a partial ban, complete prohibition of mobile ICBM’s remains strongly preferable since verification would be simplified and more accurate; neither side could deploy more than a few mobile ICBM’s without their being detected by satellite reconnaissance.

Finally, mobile ICBM deployment is not necessary to provide military deterrence. Even if there were a completely successful preemptive attack destroying all land-based nuclear weapons, the strategic bombers and nuclear armed submarines would still survive. The submarines

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104. Recent terrorist activities in the Middle East illustrate the fact that states are not the only participants in international processes of coercion. See McDougal & Felicijano, supra note 3, at 171-73.

105. This is assumed because the easiest way to increase protection would be an increase in the escort party. R. Barnet, Who Wants Disarmament? 99 (1960).

106. Offensive Missiles, supra note 8, at 28.

107. Greenwood, supra note 76, at 225.

108. See generally Rathjens, Chayes & Ruina, supra note 27, at 57.

109. Id.

110. Mobile ICBM deployment is urged because land-based forces, not all forces, are threatened by high-accuracy MIRV’s. Offensive Missiles, supra note 8, at 28.
The SALT Process

especially are immune from attack because no effective means of tracking submarines exists at present, and it is unlikely that such a capability will be developed in the foreseeable future.\textsuperscript{111} Of course, there is a military reluctance to concede the vulnerability of the land-based deterrent, but there is no reason to believe that submarines do not provide adequate military deterrence.\textsuperscript{112}

Mobile ICBM systems would not necessarily add to military deterrence because it is questionable whether they can adequately perform their purpose of protecting ICBM's from preemptive attack. For example, if the Soviets deploy a rail-launched or truck-launched mobile system, they will probably position their mobile weapons on roads or railroads that are not heavily used, to minimize both the weapons' obtrusiveness and their vulnerability in case of an attack on the cities. ICBM's weigh a great deal, however, and so the roads or rails would have to be heavy-duty. If there is only a limited amount of heavy-duty but little-used road or rail capacity, an American preemptive attack could be increased to cover all of those locations and thus be effective in destroying Soviet land-based retaliatory capacity. It would be easier to destroy a mobile ICBM than a fixed-site ICBM, because the mobile weapon would not be protected by a silo.\textsuperscript{113}

The United States' system of putting ICBM's in airplanes which would take off and launch the missiles from the air would also be ineffective in protecting the missiles if the airplanes could not take off before they were destroyed by Soviet missiles. An airplane on an inland U.S. base would have sufficient time to take off in an attack from the continental Soviet Union.\textsuperscript{114} The airplanes might be vulnerable, however, to a missile fired on a depressed trajectory, launched from a Soviet submarine just off our coast.\textsuperscript{115}

The objectives of restoration, rehabilitation, and reconstruction, which concern the reestablishment of order after a violation, are involved in the decision whether to deploy mobile ICBM's to the extent

\textsuperscript{111} Antisubmarine Warfare, supra note 45, at 145. See J. Stone, Containing the Arms Race 146-52 (1966).
\textsuperscript{112} See generally Annual Defense Dep't Report FY 1975, supra note 8, at 49.
\textsuperscript{113} For an analysis of the extent to which silos provide protection, see Offensive Missiles, supra note 8, at 22.
\textsuperscript{114} Over-the-horizon radar and new satellite surveillance which can detect enemy ICBM launchings give the Strategic Air Command approximately 30 minutes warning time. Quanbeck & Blechman, supra note 19, at 34.
\textsuperscript{115} Soviet submarines deployed within 100 miles of our shores could fire their missiles on depressed trajectories at our airbases which would cut our reaction time to six minutes. While there is no indication that the Soviets are developing depressed trajectory SLBM's (submarine launched ballistic missiles), or that they would risk stationing them so close to the United States, this potential ability lessens the desirability of air-based mobile ICBM deployment. See Quanbeck & Blechman, supra note 19, at 89.
that such deployment impairs arms control agreements. If verification
difficulties after deployment make agreements less likely, the whole
process of SALT will be weakened. In an atmosphere of mistrust
where states are unwilling to regulate force levels to maintain world
order, they are less likely to enter into agreements which regulate
their action after a violation of that order.

III. United States Policy in Regulating Mobile
ICBM’s: Appraisal and Recommendation

In order to decide whether to create international law regulating
mobile ICBM’s (in the course of SALT II or elsewhere), policymakers
should determine how interests of world order are best served. From
the perspective of United States policymakers, the questions are first,
whether the advantages preserved by limiting mobile ICBM’s are
worth the costs of losing the weapon’s potential, and second, if this
limitation is in the interests of the United States, what should the
country be willing to concede in order to obtain an agreement.

In the current strategic context, it is in the best interest of world
order to ban, or at least limit, mobile ICBM’s. The arguments for
and against mobile ICBM deployment can only be resolved contextu-
tually, for the demands of world order vary over time. Both sides of
the mobile ICBM debate are concerned with protection from viola-
tions of world order.116 The argument for deployment which seeks
the objective of prevention is concerned with maintaining balanced
force levels. Balanced forces, however, can be obtained through ne-
gotiations as well as through unilateral response to technological de-
velopments.

The primary objective in prevention of violations of world order
through the use of strategic weapons is to maintain a situation where
continued limitation of armaments, even measured disarmament, is
most likely. If mobile ICBM’s are regulated or prohibited, verifica-
tion capabilities will not be reduced and additional arms control will
be encouraged, enhancing, in turn, the possibility of achieving all
five of the SALT objectives. This regulation would be especially sig-
nificant with respect to deterrence, for arguments favoring deployment
claim that mobile ICBM’s would increase military deterrence. In-
creased arms control can provide other types of deterrence as well,
including economic, diplomatic and ideological sanctions.117

116. See generally McDougal & Feliciano, supra note 3, at 11-12.
117. See generally McDougal, Lasswell & Vlasic, supra note 4, at 422-24.
Mobile ICBM deployment is not necessary in the context of the United States' present overall deterrent levels. If alternative weapons systems become vulnerable, the advantages of mobile ICBM deployment would increase. For example, if the United States submarine-based deterrent should become vulnerable to Soviet attack, mobile ICBM deployment might become critical to deterrence and maintenance of world order. As long as the United States has a sufficiently large lead time in anticipating Soviet threats to alternative forces, however, there is no need to deploy mobile ICBM's.

United States policymakers must realize that the Soviet Union is confronted with more pressures to deploy mobile ICBM's, given the present superiority of United States technology and the structure of the Soviet bureaucracy. Accordingly, the Soviets may require that the United States make certain concessions before the Soviets will agree to regulate mobile ICBM's. The United States must recognize that a limit on mobile ICBM's actually represents larger concessions by the Soviets, and policymakers in the United States must be willing to make additional concessions in return. The Washington and London Naval Conferences illustrate the situation where the optimal basis for comparing weapons reductions is not to define a numerical coefficient, but to concede the minimum forces that each side considers necessary to maintain deterrence. The American concessions should be limited in time; they would be reevaluated as the Soviet offensive posture improves.

Four recommendations can be made concerning the nature of concessions that the United States should be willing to make to the Soviet Union. First, the United States should vigorously seek an agreement which totally bans mobile ICBM's. Since no mobile ICBM's are deployed at present, the agreement would provide simply for a continuation of the status quo. A total ban on mobile ICBM's would be the easiest agreement to verify, since the United States already verifies that no Soviet mobile ICBM's are deployed and could detect the introduction of any significant number of missiles. Verification is often considered to be a prerequisite to arms control, and a total ban would preserve opportunities for additional arms control agreements. Mobile ICBM's do not need to be deployed for military deterrence because there are already alternative means of effective military deterrence, and because mobile ICBM's may be vulnerable to enemy attack. Moreover, deployment, by decreasing opportunities for arms control and

118. Bull, supra note 33, at 42.
adding an element to military deterrence, also reduces opportunities for economic, diplomatic and ideological deterrence. A total ban would be in the United States' best interests because it already has a lead in counterforce ability resulting from the greater accuracy of its warheads.

A total ban would be of significant advantage in curtailing development of mobile ICBM technology and its spin-offs, since, without immediate uses for the technology, the pressure to develop it is bound to be reduced. Once deployed, any weapons system inexorably tends to be upgraded, and can therefore lead to new threats to world order. Moreover, it is unlikely that systems once deployed will ever be phased out.

The second recommendation is that the United States be willing, if a total ban fails, to concede to Soviet demands for a partial ban on mobile ICBM's. The Soviet Union, because of the United States' counterforce capabilities and the structure of the Soviet military bureaucracy, may feel sufficiently threatened to insist upon having at least a minimal land-mobile force.119

Critics of a partial ban might argue that the United States could not verify whether the Soviets would exceed any limit set by a SALT Treaty. The United States, however, should be willing to accept a partial limit because the potential for cheating would not be dangerous to its interests. The existence of unauthorized Soviet missiles, considering the already high force levels on both sides, would not be sufficient to pose a threat to United States military deterrence.120 The Soviets would have little incentive to cheat, not only because it would serve no military purpose, but also because there is a high probability that the truth would ultimately be revealed by a defector or other alternative source of verification.121 If the Soviets ever used the additional missiles for propaganda, such use would be self-defeating; it would be an admission that they had cheated.

The third recommendation is that the United States should be

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119. The size of a small Soviet mobile ICBM force might range from 100 to 300 mobile launchers, which could probably be verified within an error margin no greater than 100 percent (i.e., we would know if they had more than 200 to 600 launchers). Verification becomes more difficult as the size of the force allowed under the treaty is increased.

120. The marginal number of launchers we would not be able to detect would be insufficient to shift strategic balances, since the large number of forces already deployed make small numerical advantages militarily worthless. See Summary of Discussion, in IMPACT OF NEW TECHNOLOGIES ON THE ARMS RACE, supra note 22, at 339.

The SALT Process

willing to link a mobile ICBM limit with limits on MIRV's and cruise missiles. These high accuracy weapons are the cause of Soviet concern over vulnerability, and if they were limited sufficiently to reduce the threat to Soviet forces, the Soviet concern would be significantly reduced. The Soviet bureaucracy, no longer threatened by the obsolescence of immobile land-based forces, would be more willing to ban mobile weapons. Moves of this kind would involve a significant concession by the United States since its high accuracy weapons are much better than the Soviets'. It would not mean that the United States would have to limit itself to fewer or poorer weapons than the Soviets have, but rather that each side would agree not to develop a potential for a preemptive strike against the other's ICBM's. The United States would be conceding more to the Soviets in such an agreement, because it is closer to having a preemptive potential.122

The fourth recommendation is that a limitation agreement should not allow the Soviets to deploy more mobile ICBM's than the United States. Even if the Soviets argue a greater need for mobile ICBM's, the United States should not allow them to have more, since the Soviet numerical advantage could outlive their current greater need, leaving the Soviets in an advantageous position. Instead, if a partial ban is the best that can be achieved, the United States should accommodate the Soviet need for mobile weapons by allowing each side to deploy a limited number, perhaps accompanied by a reduction in the Soviet need through curtailment of the United States' preemptive threat. Moreover, any numerical advantage given to the Soviets might be politically regarded as appeasement, and would jeopardize Senate approval of SALT.123

Conclusion

The United States and Soviet Union need to encompass all five sanctioning goals in future SALT agreements. Maintenance of world order through arms control requires that all concerned states participate; that pressures which tend to cause force imbalances and frustrate prevention be eliminated; that all methods of deterrence, not

122. This would be similar to concessions made to the Soviets in SALT I, based on United States superiority in missile accuracy. See T. Moore, supra note 31, at 2.
123. In a Joint Resolution accepting the force level agreement of SALT I, Congress requested that the President seek future agreements which "would not limit the United States to levels of intercontinental strategic forces inferior to limits provided for the Soviet Union." Pub. L. No. 92-448, 86 Stat. 746 (H.R.J. Res. 1227, Sept. 30, 1972).
just the military, be used as sanctions; and that methods of minimizing
damage after violations be incorporated into SALT agreements.

Mobile ICBM deployment would have several deleterious conse-
quences for world order, and the United States should work whole-
heartedly for a total ban. If the apparently greater Soviet need for
mobile ICBM's prevents a total ban, a creative partial ban should
be sought, perhaps linking mobile ICBM regulation with MIRV or
accuracy limitations. Above all, mobile ICBM development should
be brought under agreed regulation, since unlimited competitive de-
velopment provides real risks to world order.