

Some reflections on transparency in the contemporary security environment

William WALKER¹

Transparency has long been central to arms control. But what meaning does this word carry today? Has it acquired different meanings, depending on the context in which it is used and the purposes to which it is put? I wish briefly to explore the contemporary notion of transparency, and to draw attention to three forms of transparency—voluntary, non-voluntary and coercive—that are today being practised by states in pursuit of their individual and collective interests.² My concern is with the substantial shift in the balance of and relations between these approaches in recent years, and by the dangers that will arise if that balance and those relations are misjudged.

In the mid-1990s there was talk of constructing a transparency *regime*, especially in the context of establishing global controls over fissile nuclear materials. A radical extension of transparency was seen in many capitals as a necessary device for consolidating the gains made since the end of the Cold War and of ensuring the irreversibility of the arms reduction and disarmament measures that were then being contemplated. Such a regime would have been constituted through unilateral, bilateral and multilateral measures. Particularly important were the reforms in the safeguard system being developed under the IAEA's 93+2 programme, the establishment of organizations to implement the treaties banning chemical weapons and nuclear explosive testing, the expected negotiation of a Fissile Material Cut-off Treaty, and the negotiation (again expected) of a START III Treaty by the governments of the United States and the Russian Federation which would have verified the dismantlement of nuclear warheads for the first time.

No such regime has been established. Indeed, most of the transparency measures that were envisaged those few years ago have come to nought. The situation today is that transparency is even more essential to the achievement of international security, yet its attainment at an international level has become much more difficult. The means by which states are attempting to render activities transparent has also undergone a substantial change.

It is useful to distinguish three distinct if interconnected transparency processes—those that are essentially *voluntary*, *non-voluntary* and *coercive*. What do I mean by these terms? The voluntary processes are those involved in the intergovernmental practice of arms control, non-proliferation and disarmament: that is, when states volunteer information about their capabilities and activities in order to bring about mutual gains in security. Because sovereignty is involved, and because the benefits of transparency have to be weighed against those of confidentiality, this voluntary transparency has to be laboriously negotiated. There is no such thing as 'freedom of information' in this international setting: such transparency is always rule-bound, institutionalized, and held within defined limits (an obvious

¹William Walker is Professor of International Relations at the University of St. Andrews (Scotland).

example is the NPT safeguard system as defined in INFCIRC/153). An instrument for creating trust between states, the processes by which transparency is achieved must themselves be trusted if it is to have value.

For this interstate, or *external*, transparency to function, there must also be *internal* transparency within states. States need to know, and need to establish organizational capacities so that they are in a position to know, what exactly is happening on the territories under their jurisdiction. It is no exaggeration to say that transparency begins at home. One of the important, if uncelebrated, aspects of external

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transparency is that it encourages internal discipline. The NPT safeguard system, with its requirement for states to establish internal systems of material accounting in line with an international best practice, can again be cited in example. Among its various benefits, a Fissile Material Cut-off Treaty would strengthen internal transparency processes in states that have not submitted their fissile materials to routine international inspection. Given the worries about weak and failed states, the importance of achieving internal transparency, and of ensuring its essential honesty, needs little emphasis.

Coercive transparency is the dark companion of voluntary transparency (I shall come to non-voluntary transparency below). It is being practised today in Iraq where a state is refusing to comply with the transparency obligations that it voluntarily accepted under international law. Hence the efforts by the United Nations, backed by its Security Council, to prise open the box and reveal the full extent of Iraq's WMD capabilities. Three things should be noted here. Firstly, coercive transparency is inevitably addressed to an adversary bent on concealment: it is a contest between a state's capacities to conceal and external actors' capacities to reveal, with the threat of military force the principal means by which the latter persuade the former to end its concealment. As such, a resort to coercive transparency indicates that the processes of voluntary transparency have broken down in a specific context. Secondly, coercive transparency can only be practised by great powers against comparatively weak powers, and in circumstances where the threat of force can be made real. It is inconceivable that such transparency could be imposed on the Russian Federation, or China, or India, or Japan, let alone on the United States. North Korea also demonstrates the difficulty of exercising coercive transparency where minor powers have the ability (through the threat of onslaught on South Korea in that case) to deter military action against them. Thirdly, coercive transparency is only realizable when framed by international law, and by international legal and political processes. Its legitimacy has to be established because it entails a deep penetration of national sovereignty, because it has to be accompanied by the threat of force, and because it is implemented through and by the primary international institution, the United Nations. In consequence, coercive transparency is bound to be an exceptional measure—it cannot in any sense become standard practice.

By *non-voluntary* transparency I refer to intelligence gathering, the process by which states attain information about other states or entities without their consent.³ Faced with opponents, now including terrorist groups, which appear determined to acquire WMD capabilities and to conceal their activities, intelligence gathering becomes the first and possibly the only means by which states can begin to defend themselves. We should note that it is radically different from voluntary transparency as described above. It is subterranean, in that the means of attaining transparency are themselves covert and are given substantial immunity from the political processes of deliberation and accountability, even when intelligence agencies are cooperating amongst themselves. Almost by definition, it is not regulated and treaty-bound within the international domain, partly because it entails the persistent infringement of Westphalian norms of sovereignty, and partly because states are loath to accept any formal restriction (internal or external) on their capacities to acquire information by these means. There are certainly 'rules of the game', but they are rarely if ever formalized.

Since the mid-1990s, there has been a marked shift from reliance on voluntary to non-voluntary forms of transparency, a shift that has become much more pronounced since 11 September. The immediate post-Cold War years had seen a great extension of voluntary transparency through developments in arms control, non-proliferation and disarmament. Most states were engaged in this initiative. The trend halted after 1996–97. Following the conclusion of the treaties banning nuclear explosions (the CTBT in 1996) and reforming the NPT safeguard system (the Additional Protocol of 1997), there has been no significant development of transparency measures in the multilateral domain. What is more, the practice of building ever-increasing amounts of transparency into bilateral arms control treaties has gone into reverse. Instead of START III with its enhanced verification, the governments of the Russian Federation and the United States have concluded an arms reduction treaty in 2001 (SORT) which contains no verification measures of any kind and effectively negates those agreed in START II. Washington and Moscow may claim that verification is no longer necessary given the improvement of their relations, but the reality is that they have awarded themselves renewed freedom to deploy nuclear weapons as they see fit. They are gambling that transparency is no longer necessary for trust in their strategic relations.

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In contrast, the last few years have brought a great burgeoning of non-voluntary transparency, or intelligence gathering, in the service of national and international security. The key word is *detection*—the detection of the covert activities of state and non-state actors desiring to acquire WMD and the capabilities for manufacturing them. As knowledge has diffused, as actors have become more skilled at hiding their activities, and as the United States in particular has become more anxious about being ‘caught napping’, the early and precise detection of clandestine weapon programmes has acquired a much higher priority. Traditional verification no longer seems capable, on its own, of delivering information in the quantity and quality that is being demanded.

These trends may be seen in some if not all capitals as justified responses to shifts in the post-Cold War security environment. They nevertheless give rise to a number of troubling questions.

Firstly, can allegiance to the NPT be sustained if the balance of expectations on transparency is skewed even more against the non-nuclear-weapon States Parties (NNWS)? Whilst the United States is turning away from multilateral arms control and is ending its commitment to transparency in bilateral arms control agreements with the Russian Federation, and whilst India, Israel and Pakistan are largely evading transparency, the NNWS are being pressed to accept a much higher level of transparency through the Additional Protocol. At the extreme, one State Party (Iraq) is currently being subjected to a process of coercive transparency that has no precedent. Although Iraq has brought this upon itself, there is a striking contrast between the medicine that is being meted out to NNWS and the freedom from intrusion that is being vigorously asserted by most of the nuclear-armed states. Can the NPT survive untarnished if it again becomes overtly hierarchical and discriminatory, and more brazenly the instrument of great power interests?

Secondly, how can the formal, internationally regulated and consensual practice of voluntary transparency be made to coexist with the greatly expanded but unregulated and nationally oriented practice of intelligence gathering? While always symbiotic with arms control in the strategic relations between East and West during the Cold War, intelligence gathering was kept at a distance from verification and safeguarding in the practice of non-proliferation policy. It has now come to the fore in this as in other fields: access to, and action in response to, intelligence has come to be regarded as a necessary part of international safeguards since the Iraqi and North Korean weapon programmes were revealed; and intelligence agencies are rightly seen as the primary sources of information on non-state actors. The developments may be unavoidable, but can we avoid institutions like the IAEA, whose efficacy

depends on its integrity and reputation for impartiality, being damaged by their closer association with intelligence agencies and with the powerful American intelligence agencies in particular? How should the interfaces between the voluntary and non-voluntary systems be managed, and by whom? How can trust in the wise and effective management of that interface be secured? Is there need for some codification of the 'rules of engagement' across this interface?

Thirdly, the voluntary transparency arrangements embedded in arms control treaties involve explicit agreement on 'how much is enough'. That is, they define the quality and quantity of transparency that is required to meet security objectives. Can states any longer agree, in general or in specific cases, on 'how much is enough'? If powerful states come to believe that 'rogue actors' (state and non-state) will always be able to squirrel away materials and capabilities that can be turned to lethal effect, then the level of transparency that is required for the sustenance of confidence will tend towards infinity. When that happens, transparency loses its relevance: the only recourse is to extreme measures, including war, so as to destroy the actor that is posing the threat. Conversely, if states desirous of war deny transparency measures the opportunity to do their work, the broad processes of transparency will themselves be undermined.

It is doubtful that any actor has the capacity to conceal a sufficient nuclear capability once the spotlight is turned on it (the same may not be true of biological capabilities). That being the case, 'how much is enough' should have an answer. But in which institutions, and in which institutional processes, should responsibility be placed for providing this answer, especially if the evidence and reasoning upon which judgements need to be based are heavily influenced by intelligence agencies drawing their information from confidential sources? These questions are, of course, highly pertinent to the current debates over Iraq. Yet they are not isolated to Iraq.

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Unfortunately, there are no simple answers to any of the above questions. Given the nature and prolixity of the threats, the pursuit of regional and global order must inevitably involve some blend of voluntary, non-voluntary and coercive transparency with much interplay between them. Managing this blend and this interplay will require superior statecraft and careful attention to process. A particular danger is that the voluntary system will wither away through lack of respect and attention, and could even collapse along with the treaties and agreements in which it is framed. Without the voluntary system of transparency with its roots in cooperation and reciprocal obligation, there can be little trust, and without trust states will assume the worst.

If international order is the common objective, reinforcing and extending this voluntary system, and the norms that it expresses, should therefore count among the highest priorities of states. Without it all states will become less secure—international order and civility now depend upon it. The alternative is a deep and illicit penetration of sovereignty and a perpetual reliance on the use or threatened use of force. This is not to deny the necessity of non-voluntary and coercive measures. However they will bring little security if they are not deployed against the background of a strong legal framework of arms control.

Let me conclude with some observations on transparency in the emerging hegemonic order. A hegemon with the immense resources of the United States has three possible approaches to global order. The first is to free itself from restraint and bend other states to its will through the exercise of structural power in the knowledge that no other state or group of states has the capacity to balance that power. The second approach is to exercise self-restraint: to invest heavily in international institutions, including international law and arms control, and to use all its power resources to shape and uphold these institutions. The third approach is to seek some blend of the first and second approaches, involving a careful balance of coercion and institutionalism, a balance that sustains international legitimacy.

From the mid-1990s onwards, the American administrations have moved against the second option, with the current administration veering towards the first option since 11 September. If this trend continues we are indeed in another world. My hope and expectation is, however, that the third approach will soon begin to dominate in Washington, especially if some tolerable resolution to the Iraqi and North Korean crises is achieved. If I am correct, there will be a return to cooperative institution building, including arms control and its transparency measures, within the next few years. If I am incorrect, I dread to think what the future holds.

Notes

- 1 Presentation given to the Seminar on International Cooperation in the Combat against Nuclear Terrorism and the Role of Nuclear Arms Control, Geneva, 18 December 2002.
- 2 The transparency that arises out of the processes of globalization, involving the monitoring activities of NGOs among many other things, will not be discussed here. There is no denying its importance, but I would still regard it (perhaps controversially) as secondary to the transparency practised by states, given the state's continuing primacy in global politics.
- 3 There have been circumstances in which intelligence gathering (usually referred to by the euphemism 'national technical means') has been allowed in arms control agreements, the Conventional Forces in Europe Treaty being perhaps the best-known example. However, they have been very much the exception rather than the rule.

