From the earliest days of its development, the ballistic missile has been ascribed an almost supernatural power to generate terror. As the first V-2s began to fall on London in 1944, British scientist R. V. Jones noted that British politicians were being “carried away with the threat: for some reason they seemed far more frightened by one ton of explosive delivered by rocket than by five tons delivered by aircraft.”\(^1\) Jones’ conclusion—“No weapon yet produced has a comparable romantic appeal”—is as resonant today as it was then.

The link between ballistic missiles and weapons of mass destruction (WMD) has reinforced the psychological impact identified by Jones. The poor accuracy and small payload of most long-range ballistic missiles discourage countries from arming them with conventional explosives because doing so, as one analyst put it, would be like “buying a Ferrari to collect groceries.”\(^2\) Consequently, missile development and WMD are now intertwined, and rhetoric on WMD proliferation almost always includes concerns over delivery systems.\(^3\)

In fact, the Missile Technology Control Regime (MTCR) was originally intended to buttress the nuclear Nonproliferation Treaty (NPT). A voluntary group of missile-possessing nations, the MTCR has aimed to slow the proliferation of nuclear-capable missiles by restricting their export. When the regime was established in 1987, a nuclear-capable ballistic missile was simply defined as one that could carry 500 kilograms for 300 kilometers—the estimated weight of a first-generation nuclear warhead combined with the estimated minimum distance required for a strategic nuclear strike.\(^4\) In 1993, members expanded the regime to cover missiles “intended” for all WMD use, but this comprehensive coverage came at the price of diluting relatively objective judgments about technical capabilities with trickier political judgments about intent.

The salience of these developments is that international norms on missiles have usually been related to the control of other military technology—that is to say, missiles themselves have never been regarded as inherently “bad.” This lack of a norm on missiles has become an increasingly evident problem over the last decade as the MTCR has failed to stem proliferation adequately, although it has undoubtedly impeded missile development. The MTCR is not a treaty seeking to rid the world of a specific class of weapon (as the NPT, the Biological Weapons Convention, and the Chemical Weapons Convention do). Rather, it is a policy-coordination agreement not to export missile and related technologies, and consequently it has always struggled to gain legitimacy outside of its membership. From the perspective of a developing state, the presence of export controls in the absence of norms looks much like a cartel established to maintain a strategic and technological advantage.

The MTCR has been further hampered by its lopsided approach to proliferation: it establishes export, or supply-side, controls without imposing corresponding demand-side controls on the acquisition of such technology. Nor does it offer potential new members recompense for their investments into missile technology, which they are no longer supposed to sell as members. Under these conditions, a dwindling number of suppliers have the market increasingly to themselves while demand remains unaddressed. For a state that has invested funds and expertise into missile development, the economic reasons for staying out of the MTCR may be considerably stronger than for joining it.
By the mid- to late-1990s, missile proliferation had become a top issue on the international security agenda, and it was becoming clear that the effectiveness of the MTCR was dwindling. North Korea’s surprising Taepo Dong test in 1998 and the rising U.S. interest in missile defense further stressed the need for change. In recent years, the international community has made several attempts to address the MTCR’s shortcomings. In 1999, Russia proposed a comprehensive “Global Control System” (GCS) on missiles, which would have required nations to provide notification of pending missile or space-launch vehicle (SLV) launches and would have offered incentives for states to forswear the use of missiles as delivery mechanisms for WMD. The Clinton administration pursued bilateral negotiations with North Korea that produced a flight-test ban in 1999 (although not the hoped-for ban on missile exports); and the United Nations ordered a study group on missile issues in November 2000, which has met three times so far.

However, these initiatives have yet to produce results. The GCS initiative remains under discussion, but it has reportedly met with “a frosty reception,” especially in Washington. The bilateral discussions between the United States and North Korea have yet to resume. Finally, the UN study does not appear to have much political backing; only two MTCR members—Russia and South Africa—supported it, and of the 23 states participating, only 10 voted in favor of conducting it at all.

As these initiatives produced their rather stunted fruit, MTCR members have attempted to develop solutions of their own. The MTCR is, after all, the only multilateral instrument for missile control, and any demand-side regime would have to work alongside it. While undertaking this task, MTCR participants began trying to address some complex and daunting problems, some rooted in the nature and dynamics of ballistic missile proliferation, others rooted in the nature of the regime itself. The combination of these problems has produced a cautious initiative, the International Code of Conduct Against Ballistic Missile Proliferation. By itself, the code will have limited effectiveness in curbing or restraining proliferation, but it may be able to lay the groundwork for more far-reaching proposals.

Challenges to Overcome

While trying to develop the code, MTCR states have had to grapple with four key issues. The first is the uniquely threatening nature of ballistic missiles, which exert strategic effects of a qualitatively different nature than other delivery systems. An intermediate-range or strategic ballistic missile can reach its target in a matter of minutes, compared to hours for a strategic bomber. Because ballistic missiles fly at phenomenal speeds and travel mainly through space, defending against them is extraordinarily difficult, U.S. missile defense plans notwithstanding. No other delivery system can provide all those elements of range, speed, time, and relative imperviousness to defense. For a state without a force-projection capability but whose aim is to generate long-range strategic effects, ballistic missiles are the delivery system of choice.

Second, MTCR members possess large numbers of ballistic missiles with great range, accuracy, and sophistication. In the absence of a meaningful commitment to global ballistic missile disarmament, justifying missile nonproliferation becomes extremely thorny. On what basis can states such as Russia and the United States advocate ballistic missile restraint or abstention by states such as India, Pakistan, and Iran? There is no MTCR equivalent to the arrangement under the NPT, whereby some states are allowed to possess nuclear weapons and others are not, in exchange for help with peaceful technology and ultimate disarmament. MTCR members are therefore in an awkward position when advocating ballistic missile nonproliferation.

This hypocrisy is not lost on states that are pursuing ballistic missile development outside of the MTCR. For example, last year Pakistan argued in a UN debate that “the missile capabilities currently existing or emerging in developing countries are of no significance compared to the massive delivery capabilities possessed by the nuclear-weapon states under the treaty on the nonproliferation of nuclear weapons and their allies.” The third problem lies in the causes of ballistic missile proliferation. Ballistic missile initiatives, especially those in the developing world, are not always responses to other ballistic missile programs. They can also be responses to force projection capabilities in the developed world. For example, Iran’s Shahab missile program is not only a response to the missile capabilities of neighboring Iraq but is also probably driven by the United
States’ forward deployment capability in the Middle East (and now in the former Soviet republics in Central Asia). The use of bombers, cruise missiles, and precision-guided munitions by NATO allies in the Persian Gulf, Kosovo, and, most recently, Afghanistan thus motivates insecure, developing states—especially regional powers—to acquire long-range ballistic missile capabilities.

Fourth, ballistic missile technology has peaceful uses. The great bulk of SLV technology is interchangeable with that of ballistic missiles, and, therefore, even the most peaceable SLV unavoidably has dual-use potential. A commission headed by Donald Rumsfeld in 1998 to assess the ballistic missile threat to the United States estimated that states would launch 1,697 satellites between 1998 and 2008, with a total value of $120 billion. A demand-side missile nonproliferation regime would need to find some way to separate the peaceful commercial exploitation of space from the development of ballistic missiles.

The Code of Conduct

MTCR states first made a concerted effort to address missile proliferation at a 1999 plenary meeting in Noordwijk, in the Netherlands. There they pledged to develop “new qualitative responses to face the new proliferation threats,” by which they meant confidence-building measures in the immediate term, leading eventually to “responsible missile behaviour.”

Proposals discussed at the plenary attempted to address three specific problems. First, they sought to separate ballistic missile development from that of SLVs; but because of the difficulty of the problem, proposals centered around policy declarations and transparency of SLV programs. Second, states proposed methods that would encourage transparency in missile development. Finally, ideas were circulated to discourage missile proliferation by establishing missile-free zones and “incentivizing” missile abstinence.

The ideas discussed at Noordwijk were then synthesized into a draft code of conduct, which was agreed upon at the 2000 Helsinki plenary. This draft was then circulated among nonmembers of the MTCR, and a revised version agreed at the 2001 plenary at Ottawa. It is this document, which has since been revised, that is now under discussion. One meeting was held in February of this year, and another was held in Madrid in mid-June. If a draft text can be agreed, states plan to launch the code for signature at The Hague at the end of 2002.

The code opens with a preamble noting “the increasing regional and global security challenges caused by the ongoing proliferation of ballistic missile systems capable of delivering WMD.” The rest of the text has three elements: a set of basic principles that establish the code’s foundations, “general measures” that further the code’s goals in terms of policy, and confidence-building measures.

The principles tout the need “to prevent and curb” the proliferation of WMD-capable ballistic missiles and the right to the peaceful use of space “in ways that do not contribute to the proliferation of ballistic missile systems.” They further state that transparency measures on missile and space programs are needed “in order to increase confidence and promote non-proliferation of ballistic missiles and ballistic missile technology.”

The general measures therefore require states to “curb and prevent proliferation of Ballistic Missiles capable of delivering weapons of mass destruction”; to exercise “maximum possible restraint” while developing, testing, and deploying ballistic missiles; and to follow the precepts of the space arms control treaties. They also call on signatories to refrain from supporting or assisting ballistic missile programs in states illegally developing WMD and to be vigilant about assisting SLV programs.

The code’s confidence-building measures are its most developed element. They require subscribing states to make annual declarations on ballistic missile policies and launches and on SLV policy, possessions, and launches. The code also says that states could, if they wish, host international observers at SLV launch sites. This section seems to encourage transparency work outside the code by stating that “subscribing states could, as appropriate and on a voluntary basis, develop bilateral or regional transparency measures” in addition to those mentioned. The final clause of note is a statement that “[i]mplementation of the above Confidence Building Measures does not serve as
justification for the programmes to which these Confidence Building Measures apply.”

Disappointingly, the code makes only cursory reference to vague “cooperative measures” and makes clear that these measures will be implemented outside of the code’s framework. In other words, the code will be a prerequisite for cooperative measures, not the institution to implement it.

Assessing the Code

The code is a noticeably cautious document. It is politically rather than legally binding, and although it contains several references to the need to stem missile proliferation, it establishes few mechanisms to do so. There are two key reasons for this prudence, both of them rooted in the absence of global norms on ballistic missiles.

The first is the provenance of the code, which has its origins in an organization that is regarded with distrust and sometimes outright hostility by many of the states that can be considered the “targets” of the code. This meant that the code’s drafters had to tread extremely carefully. Aware that the MTCR is widely viewed as discriminatory, they could only include measures that they were willing to take on themselves. The code had to be a regime to which an MTCR member could sign up, and the large missile arsenals of some MTCR members meant that a call to cut or limit missile stocks was unfeasible.

The second reason for the code’s caution is the sheer difficulty of devising norms for a demand-side missile regime. Justifying the MTCR was comparatively simple: members linked their regime to WMD-control treaties, and it was for them to decide whether a potential importer intended to develop a WMD-capable missile using transferred technology. Setting norms for a demand-side regime was more difficult. Even if the code could include a prohibition on developing missiles that could be used to carry weapons of mass destruction, a subscribing state could simply argue that its missiles were intended for delivering conventional munitions. Moreover, because the causes of missile proliferation vary by region, small steps are the only things likely to be acceptable on a global scale.

Working with this framework, the code succeeds in putting all but one of the four challenges posed by ballistic missile proliferation on the table. The code’s references to the security challenges presented by the spread of missiles and the need to curb and restrain proliferation are an acknowledgment of the uniquely threatening nature of ballistic missiles. It tries to deal with the unequal distribution of missile technology by only including measures that any missile-possessor state can sign up to. The code also acknowledges the peaceful space-launch uses of the technology at several points. Thus, only the development of ballistic missiles as a response to other types of military capabilities is overlooked.

These are all points in the code’s favor. However, the code is still severely hampered by the problems inherent in both missile proliferation and the MTCR, and the drafters had to stretch the code’s provisions very thin in order to produce a code that would be acceptable to any state possessing ballistic missiles. In the end, the code succeeds in setting norms for missiles, but the norms are of a very limited nature. Nearly all the code’s elements relate to transparency, and so the norms it sets deal more with covert missile programs than with material nonproliferation. The code is also more concerned with ensuring that missile possessor states’ behavior is “responsible”—that is, when it conforms to the general measures and confidence-building measures set out in the document—than with working out how to curb or roll back the existing distribution of technology.

The code has other drawbacks. One is its exclusive focus on ballistic missiles, to the exclusion of cruise missiles. Due to the manifold uses of the required technology, the MTCR only partially addresses the spread of land-attack cruise missiles. The regime’s guidelines were deliberately designed not to impede the transfer of manned-aircraft technology and are therefore unavoidably, if inadvertently, less effective against cruise missiles, which have significant technological overlap with aircraft.

Several recent developments have been disturbing: Russian-Indian cooperation on the supersonic Brahmos cruise missile, British sales of the Black Shaheen cruise missile, Chinese development of a 1,000 kilometer-range cruise missile (the Hong Niao-2), and unconfirmed reports of an Israeli long-
range cruise missile, to name but a few. Furthermore, the Pentagon’s Militarily Critical Technologies List noted in 1998 that “cruise missiles pose perhaps the gravest delivery system proliferation threat to U.S. worldwide interests.” This assessment was made prior to North Korea’s Taepo Dong test in August 1998, but cruise missile proliferation remains a significant problem.

From a different angle, the code’s focus on ballistic missiles may well look suspicious. The force projection and precision-guided munitions capabilities possessed by the United States and its allies are among the chief motivations for regional ballistic missile proliferation. This asymmetry goes unrecognized in the code. Consequently, many developing countries may see the code as a device to monitor their ballistic missile development.

A further problem is that the code’s norm on missiles is so weak that it demonstrates the drafters were unable to reach consensus on the unacceptability of missiles. Without such an understanding, there is a chance that the code could inadvertently give a patina of legitimacy to the missile programs of those states that sign up. An analogous situation is the NPT’s approach to India and Pakistan. If these two nuclear-capable states were admitted to the treaty regime as nuclear powers, then the whole normative basis of the treaty would be undermined, since such an act would grant legitimacy to the very thing the treaty was designed to prevent.

Some participating delegations have rightly expressed fear that the code may do something similar for states such as Iran, which have missiles like the Shahab. For these states, the code’s statements about the need to curb proliferation and restrain missile arsenals do not go far enough. They argue that “responsible” missile behavior should mean no missile behavior. Failing to explicitly state this risks hinting that states have acceptable ballistic missile programs if they conform to code requirements, something that may create more problems than are solved. The code’s only nod toward this problem is a cagey statement that implementing its confidence-building measures does not justify the programs to which these measures apply.

The Bush administration’s stance on the code may also complicate matters. Although Washington has made supportive noises on the code, they have had a rather perfunctory air, given the administration’s failure to make any contribution to the negotiation meeting in February. As with many other things, it is easier to identify what the administration is against than what it is for, but its skepticism over norm building and regimes does not bode well for initiatives such as the code, which would be damaged if the United States were not fully supportive. It seems most likely that the Bush administration will order the code poorly in relation to the other methods of tackling missile proliferation: missile defense and export controls. This policy may become self-fulfilling: a dismissive attitude toward the code by Washington is likely to make the code considerably harder to sell in the developing world. As a result, the code could completely fail, leaving export controls and missile defenses as the only remaining tools.

In sum, the code’s accomplishments are modest and its weaknesses are serious; not even its most ardent supporters would regard it as a satisfactory solution to the problem by itself. Rather, the code should be viewed as a useful first step in generating multilateralism where little currently exists. In other words, the question is not what the code can achieve in and of itself but rather how its provisions can be utilized in other initiatives. The code cannot be expected to solve the problem, but it may generate the conditions for working the problem. A number of options can be considered.

**Moving Forward**

The code includes almost no incentives for states to join it, but some of the less ambitious proposals floated in the Russian GCS initiative might be considered to address this problem. The concept of negative security guarantees, for example, is promising. In fact, Spain and Russia have both expressed an interest in pursuing the idea in the code’s context. The United States and its allies are not likely to use ballistic missile during a military attack, so an agreement not to use those missiles against abstainers would cut a rather limited amount of ice. However, the symbolic political value of such an agreement should not be underestimated.

Second, the confidence-building measures in the code can be developed and deepened, although
not necessarily through the code itself. The flight test ban announced by North Korea, which is still in place, illustrates that some confidence-building measures can be implemented under trying circumstances and is perhaps indicative of a way forward for the code. However, regional confidence-building initiatives may be more feasible than global ones, a point demonstrated both by the code’s caution and the difficulties encountered by alternative proposals such as Russia’s GCS. Problems with trying to create global norms on delivery systems have also been highlighted by Israel, which has reportedly criticized the code’s provisions for notification of missile test launches on the grounds that “in tense regions, like the Middle East, announcements of missile launches are perceived as threats, not the opposite.”

Israel has spoken for many states by arguing strongly that any controls on missiles need to take special regional circumstances into account.

Third, fears over the code’s possible legitimization of missile possession must be addressed. The code’s focus on tackling ballistic missiles on their own terms is overdue and to be welcomed, as is the tacit recognition that a step-by-step approach is the best place to start. However, although it must be recognized that WMD norms cannot simply be transplanted to missiles, the link between ballistic missiles and WMD should be maintained. But assessing whether a missile is “intended” for WMD use is a political judgment as well as a technological one, and it would be difficult to incorporate such a judgment into the code without blurring the focus on missiles.

One way to address this problem is to preserve and upgrade the code’s reference to WMD. The code could mandate that any state in less than good standing as a WMD-regime member should be ineligible to subscribe to a missile nonproliferation regime. This, of course, would have more resonance if there were tangible benefits to regime membership. But emphasizing the code’s link to WMD regimes without blurring the distinction between missiles and WMD should go some way to allaying concerns about legitimization.

Fourth, the difficult SLV issue will have to be tackled. Two ways forward for the code could involve a clearer schedule of transparency and confidence-building measures on SLVs. The more transparent a state’s program is, the greater reassurance others have that the state is putting the technology to peaceful use. Along these lines, the code could offer graduated incentives, offering more access to otherwise-restricted technology when stronger verification measures are in place. Another option is for the code to include provisions to establish international consortia on space launches, under which states currently possessing launch technology agree to launch satellites at favorable rates for states that agree to forego SLV development. This way, the peaceful use of outer space could be guaranteed while still maintaining tight controls over launch technology. Given that the market for space launches is becoming saturated in a time of shrinking demand, joint space-launch ventures may become comparatively more attractive and economically viable. That such cooperation is possible and practical should not be doubted: only last month, Russia launched a U.S. telecommunications satellite using facilities in Kazakhstan.

Most importantly, the code must not be seen in isolation. Of the above options for moving forward, all involve maintaining links with developments in other fields: with force projection capabilities and cruise missile threats, with the status of WMD regimes, and with the development of SLV programs. A successful code will necessitate positive developments in all those fields.

As a nonproliferation device in its own right, the code is a thin initiative. Indeed, placing too much weight on the code would be equally as counterproductive as placing too little. However, as a part of a wider initiative to develop multilateralism in a field where little exists, it does have a role to play. The code is worth pursuing because it may help generate conditions to work the problem—perhaps along regional lines—rather than because it is a universally acceptable code that will resolve problems by itself.

If there is a recurrent theme in ballistic missile proliferation, it is the absence of engagement among missile possessors. Of the states that possess ballistic missile capability beyond basic theater missiles, no real forum exists where they can engage each other, much less create a real prospect for multilateral norms. The MTCR can only promote such engagement among a very select group of states, and its discriminatory image is a barrier to norm development. If either norms or opportunities for engagement are to be created, then the code is the place to begin.
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NOTES
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3. Aaron Karp, “Can Other Non-Proliferation Regimes Be Insulated from Developments in Missile Proliferation?” paper presented at a Program for Promoting Nuclear Non-Proliferation workshop, Høsbjør, Norway, December 10-12, 1999.
16. This idea has long been advocated by Lawrence Scheinman. See, for example, “Ballistic Missile Proliferation,” January 1995, http://dosfan.lib.uic.edu/acda/speeches/schein/schein0.htm.

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