

## POLICY MEMO

# Recommendations to Congress Concerning the Investigation into SARS-CoV-2's Origin

BY THOMAS DINANNO AND PAULA A. DESUTTER

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On May 26, 2021, President Biden announced that he had tasked the US Intelligence Community (IC) with providing a definitive review of SARS-CoV-2's origins within 90 days,<sup>1</sup> and that deadline is fast approaching. On the same day, CNN reported that the Biden administration had shut down another investigation into possible Chinese government dual-use biological programs being conducted at the Wuhan Institute of Virology (WIV) and its associated facilities. This investigation, which was being conducted by the Bureau of Arms Control, Verification and Compliance (AVC), had been initiated by Secretary Pompeo's State Department in 2019,<sup>2</sup> and its purpose was to answer the following questions:

- What role, if any, did the Chinese government's virus research program play in its biological weapons program? Under the Biological Weapons Convention, any use and

development of capabilities with potential dual uses (civilian and military) must be for peaceful purposes.

- Did this virus research program and the spread of SARS-CoV-2 represent a further Chinese violation of the Biological Weapons Convention (BWC)?<sup>3</sup>

Following the completion of the 90-day review, Congress should, over the short term, request that the AVC Bureau continue the investigation into SARS-CoV-2's origin that President Biden interrupted and re-assigned to the Intelligence Community. In contrast to the US IC, the Bureau's sole function is to assess other nations' compliance with their international arms control obligations and, moreover, has the legal mandate to do so. Additionally, this memo contains recommendations concerning the US government's compliance-and-verification function over the long term that

would support policymakers and allow it to effectively fulfill its Congressional mandate.

## Background

In 2000, the Bureau of Verification and Compliance<sup>4</sup> replaced the US Arms Control and Disarmament Agency's (ACDA) Bureau for Intelligence, Verification, and Information Support (IVI), which had existed since 1999.<sup>5</sup> Chairman Jesse Helms and Ranking Member of the Senate Foreign Relations Committee Joe Biden led the charge for its creation<sup>6</sup> because they were concerned that a bureau not headed by a Senate-confirmed political appointee would lose the unique and critical focus needed for it to accomplish its verification mission, especially when led by Dr. Manfred Eimer. The ACDA IVI had had such a focus.

Creation of the AVC bureau was against the Department of State's stated intent. Instead, the Clinton administration had sought to put the verification and compliance responsibilities of the ACDA IVI under an arms control bureau to be headed by a deputy assistant secretary of state working under the State Department's under secretary for arms control and international security affairs (as part of the T family of bureaus). However, bipartisan Congressional leaders rejected this proposal because they asserted that ACDA's verification mandate would be inadequately addressed under it.

The source of Senator Helms' and Senator Biden's concern with the Clinton administration's proposal was their belief that the government entity charged with monitoring and assessing state parties' compliance with arms control and disarmament agreements and treaties should have this as its sole responsibility. As they wrote to then-Secretary Albright at the time, the ACDA IVI was the "only entity in the United States Government whose principal function was the verification and enforcement of arms control treaties and commitments."<sup>7</sup>

They feared that, under the Clinton administration's proposal, political goals and outcomes would enter into and so influence compliance assessments, thereby trumping the objective analysis crucial to fulfillment of the verification mission. Advocacy for certain policy outcomes would stifle the critical mission of independent compliance and verification analysis and investigation:

**The Committee notes the inevitable tension between the enforcement of arms control, nonproliferation, and disarmament agreements and the implications that such enforcement has for U.S. relations with various countries—and therefore the implications that the policies pursued by the Assistant Secretary will have upon the policies pursued by other Bureaus. The Committee urges that these reports be submitted to Congress as prepared by the Assistant Secretary to the maximum extent possible, with any concerns of other Bureaus or State Department officials presented in annexes to such reports.<sup>8</sup>**

In 2010, the Obama administration reversed the 2000 decision that divided the arms control functions—advocacy and negotiations—and the verification and compliance functions among separate bureaus by creating the Arms Control, Verification and Compliance Bureau (AVC).<sup>9</sup> While it is important that verification and compliance be reflected throughout the arms control development, negotiation, and implementation process, co-locating arms control with verification and compliance in the same bureau means that the trade-offs between negotiability and verifiability will be made no higher than at the assistant secretary level.<sup>10</sup>

## Implications for the SARS-CoV-2 Origin Investigation

As stated earlier, the Biden Administration's State Department terminated the AVC Bureau's investigation into

possible Chinese government dual-use biological programs being conducted at the WIV and its associated facilities and SARS-CoV-2's origin and tasked the US IC with the latter. Although President Biden's motivations for reassigning the origin investigation from the AVC to the IC are unknown, the assignment constitutes a forcing function intended to compel the IC to improve its performance by exercising greater thoroughness and scrutiny than it has previously displayed.

At the conclusion of its review, the IC will presumably turn over all relevant information to those agencies with policymaking equities, and particularly to the State Department's arms control verifiers, who will then continue their assessments as to whether the Chinese are in further violation of the BWC. The IC has long strenuously asserted it does not make policy judgments, and judgments relating to compliance or noncompliance of other state parties constitute judgments related to policy. Indeed, past IC assessments regarding arms control-related actions taken by other countries have consistently been written so as to allow a policy judgment of either 'compliant' or 'in violation.' In contrast, the responsibility to formulate policy judgments related to state parties' levels of compliance rests solely with the State Department's Arms Control, Verification and Compliance Bureau, one of only two Congressionally authorized State Department bureaus.

With respect to the SARS-CoV-2 origin investigation, the IC has up to this point largely adhered to SARS-CoV-2's zoonotic-origin narrative. This may partly be the result of briefings to IC elements conducted by experts promulgating and advocating that the origin of SARS-CoV-2 was the result of a zoonotic origin. It remains to be seen if IC analysts will entertain the strong scientific and circumstantial evidence that SARS-CoV-2 emerged from the Wuhan Institute of Virology (WIV)<sup>11</sup> where Chinese scientists were extracting and manipulating bat viruses.

## The Investigation Into SARS-CoV-2's Origin

The complex web of Chinese civilian and military biological research programs constitutes a textbook example of civ-mil fusion programs. In fact, it would be difficult to say if such a thing as a civilian program as we understand it exists in today's China. During the autumn of 2020, the State Department's verification and compliance team was tasked with attempting to ascertain whether the program involved any dual-use activities that could *potentially* violate the Biological Weapons Convention. In response, the US government's June 2021 noncompliance report stated the following:

Available information shows **China engaged in activities that raise concerns with regard to its obligations under Article I of the BWC**, which requires States Party "never in any circumstances to develop, produce, stockpile, or otherwise acquire or retain ...[m]icrobial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective, or other peaceful purposes."

**The United States has compliance concerns with respect to Chinese military medical institutions' toxin research and development because of the potential dual-use applications and their potential as a biological threat.** In addition, the United States assesses that China possessed an offensive BW program from the early 1950s to at least the late 1980s. There is no available information to demonstrate that China took steps to fulfill its treaty obligations under Article II of the BWC, which requires China to destroy or to divert to peaceful purposes all items specified in Article I of its past offensive BW program.<sup>12</sup>

Although the State Department's most recent compliance report notes Chinese efforts aimed at "identifying, testing, and

characterizing diverse families of potent toxins with dual-use applications,”<sup>13</sup> it is notably silent on China’s *virus*-collection program, even though viruses and toxins are evolutionarily distinct toxic agents. Given this fact and given that COVID is a virus and not a toxin, this omission serves as a signal to China and other adversaries and to our allies that the United States is not concerned about the potentially dangerous dual use research that was being conducted at the WIV and its affiliated facilities.

### Need for Additional Investigation

Still more is required of the State Department’s sidelined verifiers, who must determine the extent of potential Chinese weaponization of viruses, efforts ostensibly dedicated to public health research. Further, Chinese disclosures under its BWC confidence-building measures warrant a closer look in order to determine whether these contain clues, unintentional or intentional, as to the possibly offensive nature of this supposedly peaceful research. The presence of such clues would enable China to later assert that the US and other members of the international community knew and *approved* of these activities.

The activities described above are critical to US assessment of Chinese compliance with the peaceful-purposes requirement of the Biological Weapons Convention and fulfill the function intended by the legislation that created the IVI Bureau in 1998. To trust that the research conducted at the WIV and its associated facilities was solely for peaceful purposes and involved only civilian “public health” research, as BW analysts in other State Department bureaus contend, not only precludes rigorous noncompliance analysis but would be foolish—foolish, in point of fact, to the level of Neville Chamberlain naïveté.

Questions persist and are certainly ones we should be asking: Was the Chinese virus research program completely decoupled from and independent of its offensive program?

How can we account for facts that indicate otherwise? Does a lack of forensic evidence discount the damning and mounting circumstantial evidence that points to the WIV and a Chinese cover-up? Does a lack of forensic evidence indicate its absence?

Like dots waiting to be connected, facts related to China’s weapons program are lying in plain sight, and failure to ask questions such as those above contradicts the mandate given the US Arms Control and Disarmament Agency at its inception by Congress. Specifically, the language included in the ACDA legislation mandated that it employ the following standard in assessing and reporting verification of compliance: “the Secretary of State shall assume that all measures of concealment not expressly prohibited could be employed and that standard practices could be altered so as to impede verification.”<sup>14</sup> Unfortunately, only the verifiers appear to take this mandate seriously.

### Inter-Agency Disagreement as to COVID’s Origins

The Senate Foreign Relations Committee wisely predicted the animus other bureaus and agencies would have toward the work of the Bureau of Verification and Compliance:

**The Committee notes the inevitable tension between the enforcement of arms control, nonproliferation, and disarmament agreements and the implications that such enforcement has for US relations with various countries—and therefore the implications that the policies pursued by the Assistant Secretary will have upon the policies pursued by other Bureaus. The Committee urges that these reports be submitted to Congress as prepared by the Assistant Secretary to the maximum extent possible, with any concerns of other Bureaus or State Department officials presented in annexes to such reports.**<sup>15</sup>

This animus is based on other agencies' proclivity to incorporate other bureaucratic interests into their decisions and actions; in contrast, the sole mandate of the AVC and its predecessors has been and continues to be the assessment of state parties' compliance with their treaty and agreement obligations, untempered by other considerations. As the 1998 amended ACDA requires, the statutory responsibility of verifiers is to determine compliance with arms control nonproliferation and disarmament agreements and then do the following:

**Provide the President, the Secretary of State, other officials of the executive branch, and the Congress with recommendations concerning United States arms control, nonproliferation, and disarmament policy, and ... assess the effect of these recommendations upon our foreign policies, our national security policies, and our economy.**

Verifier assessments can then figure into the policymaking carried out at higher levels of government.

The operating assumptions on which the State Department's BW analysts appear to have based their conclusions—that a natural or zoonotic source are the source of SARS-CoV-2—are those presented in the *Lancet* statement<sup>16</sup> and articles published in both *Lancet* and *Nature* in 2020;<sup>17</sup> these propose a natural origin for SARS-CoV-2, with the preponderance of belief falling on a zoonotic host as its source. The veracity of those claims is now under critical scrutiny, as several signatories of those articles have since reversed their view that SARS-CoV-2 was exclusively natural in origin and have stated that a lab release origin needs to be fully explored.<sup>18</sup> Yet AVC's investigators in late 2020 were derided as not believing in science, accepting conspiracies and "opening a can of worms" when troubling facts began to emerge in IC reporting that SARS-CoV-2 may have in fact emanated from the WIV.<sup>19</sup>

US WMD analysts and the intelligence community should never assume that our best interests enter into our enemies' decision calculus and never project our value set onto an enemy. The Chinese, who according to the State Department still possess an offensive biological weapons program and who, at the same time, are systematically targeting China's Uyghur population for persecution, are our adversary.

Advocacy for adversarial perspectives and engagement at any cost have replaced dispassionate, fact-based analysis, significantly compromising the US government's ability to hold China accountable for its growing WMD programs. With respect to SARS-CoV-2, while the question of whether China may have been in material violation of the Biological Weapons Convention is still open, shuttering an inquiry whose purpose is to determine if such violations took place certainly violates the spirit of the law that established the ACDA and perhaps also the letter of this law.

Moreover, evidence has come to light regarding Chinese military biotechnology development. A State Department fact sheet dated January 15, 2021, revealed the existence of secret military programs being conducted at the WIV, indicating the need for close scrutiny of the PRC's intent and capabilities.<sup>20</sup> Several extremely troubling public statements made by Chinese officials over the last decade refer to offensive biological capabilities. For example, in 2015, then-president of the Academy of Military Medical Sciences He Fuchu argued that biotechnology would become the new "strategic commanding heights" of national defense, ranging from biomaterials to "brain control" weapons.<sup>21</sup> Further, according to *Defense One*, the 2017 edition of *Science of Military Strategy*, a textbook published by the PLA's National Defense University, included a section about biology as a domain of military struggle, mentioning the potential for new kinds of biological warfare to include "specific ethnic genetic attacks."<sup>22</sup>

Former Director of National Intelligence John Ratcliffe also stated, “US Intelligence shows that China has even conducted human testing on members of the People’s Liberation Arms in hope of developing soldiers with biologically enhanced capabilities.”<sup>23</sup>

The list of Chinese statements and troubling China-related developments continues to grow, and yet the number of investigations consequently conducted by the US Department

of State does not. Should we chalk up China’s statements to hyperbole and bluster? To do so and ignore the existence of these statements and programs constitutes de-facto acceptance of them and belies the process of fact-based analysis, betrays the public trust, and defies the AVC Bureau’s Congressional mandate. If in fact it is determined that SARS-CoV-2 may have escaped from a Chinese lab, an obvious question to ask is, what was the purpose of the research that resulted in this release?

## Recommendations for Congressional Action

The Biden administration seems reluctant to consider and has thus far failed to aggressively address China’s dual-use programs. Congress must address this by strengthening the capabilities of the verification and compliance mission and not stifling it, as is now apparently occurring.

Over the short term, Congress should:

1. **Task the Bureau of Arms Control, Verification and Compliance with continuing its arms control investigation into SARS-CoV-2 and Chinese related dual-use programs** following submission of the IC’s review. As explained previously, it has the legal mandate to do so.
2. **Instruct the AVC bureau to apply and make available all information including: historical data, intelligence reporting, Chinese scientific publications, statements by Chinese military, political and scientific officials, diplomatic submissions and records, and other information available to it in answering the question of SARS-CoV-2’s origin** so that the level of Chinese compliance with the BWC can be effectively and objectively assessed.

When this analysis is complete, the AVC Bureau should not only inform the secretary of state and president but should also issue a specific report and brief Congress on its basis for reaching its conclusions.

Over the long term, Congress should consider the following steps to strengthen the United States’ compliance and verification function:

3. **Decouple arms control and advocacy from verification and compliance**, which are, at heart, competing interests. To accomplish this, Congress should establish an independent verification and compliance bureau reporting directly to the secretary of state.
4. **Address the bureaucratic maze between treaty verifiers and treaty managers and lawyers.** The new or empowered verification and compliance bureau should be given full and sole responsibility for assessing compliance of state parties with all biotechnology agreements and treaties.
5. **Ensure the AVC bureau is resourced with technical, scientific, legal and intelligence expertise and personnel** through expanded authorities to acquire and retain these specialized expertise and skills.
6. **Over the past several years, the “other officials” clause of the ACDA has allowed the State Department legal advisor and other bureaus to**



**overrule critical recommendations of the AVC Bureau involving Chinese, Russian, and Iranian WMD programs and treaty violations.** With that veto power, State Department lawyers and other senior officials have either watered down or blocked critical findings that could have allowed the United States to hold rogue nations accountable in Geneva, New York, the Hague, and Vienna. Perhaps more problematic is their complete reliance and outsourcing of treaty compliance assessments (e.g., the NPT assessment to the IAEA) rather than conducting a US assessment.

## Conclusion

The Biden administration's "don't ask, don't act" policy serves only to empower our enemies, and the State Department bureaucracy has raised the bar so high above the criminal "reasonable doubt" standard that holding our adversaries accountable is now nearly impossible. In the case of the WIV, the preponderance of circumstantial evidence is compelling and cannot be ignored. It is certainly sufficient to allow US diplomats and foreign policy leaders to make informed decisions vis-à-vis China's place in the

world. By its blatant violations of the WHO's International Health Regulations and its suspicious and opaque behavior related to the BWC's peaceful-purposes clause, China has forfeited its leadership position on the international stage and in organizations such as the WHO and the BWC and needs to be held to account. That can happen only if we allow State's verifiers to do their jobs and continue to ask hard questions, even though these may expose uncomfortable truths.

The reality which the United States and the world must face is that treaties that are blatantly violated year after year by hostile powers such as China, Russia, Iran, and Syria with impunity offer neither security nor protection. With respect to the management of SARS-CoV-2, while the United States and its allies naively played by the rules, China took every step possible to conceal vital information. As the intelligence community prepares to release its assessment of the origin of SARS-CoV-2, the American people and the world are owed an answer on the virus' point-of-origin and whether a possible dual-use covert bioweapons program has been (and is possibly still being) conducted at the WIV.

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## Endnotes

- 1 "Statement by President Joe Biden on the Investigation into the Origins of SARS-COV-2," May 26, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/05/26/statement-by-president-joe-biden-on-the-investigation-into-the-origins-of-SARS-CoV-2/>.
- 2 Kylie Atwood, *CNN*, May 26, 2021, <https://edition.cnn.com/2021/05/25/politics/biden-shut-down-trump-effort-coronavirus-chinese-lab/index.html>.
- 3 Although China acceded to the BWC in 1984, successive administrations have noted Chinese compliance failures. Since the 1950s, the US has known that China has been conducting an offensive biological weapons program that it has failed to acknowledge and provide details concerning, including any steps it may have taken to eliminate this program.
- 4 This bureau was renamed the Bureau of Verification, Compliance and Implementation (VCI) in 2005. See "The New US Approach to Verification," US Department of State Archive, <https://2001-2009.state.gov/t/vci/rls/rm/57098.htm>.
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- 6 "History of the Department of State," <https://2001-2009.state.gov/r/pa/ho/pubs/8518.htm>.

- 7 Letter dated January 6, 1998. This language was repeated in the Senate Foreign Relations Committee Report 106-43 on the Foreign Relations Authorization Act, Fiscal Years 2000-2001, ordered to be printed on April 27, 1999 (<https://www.congress.gov/106/crpt/srpt43/CRPT-106srpt43.pdf>). That Act, with no changes to the portion of the SFRC language on the Verification and Compliance Bureau, was incorporated into the Omnibus Appropriations Bill, meaning it was approved not only by the Senate, but also the House of Representatives.
- 8 S. Rept. 106-43 (106th Congress, April 27, 1999), 29, <https://www.congress.gov/congressional-report/106th-congress/senate-report/43/1?s=10&r=14314>.
- 9 “Inspection of the Bureau of Arms Control, Verification, and Compliance,” Office of Inspector General website, June 2014, <https://www.stateig.gov/system/files/228996.pdf>.
- 10 For just this reason, Congress supplied a senior representative from the Verification and Compliance Bureau to be part of negotiating delegations. At some point, this was removed from the legislation so that time and again verifiers were excluded from negotiating teams and minimized within the T family of bureaus under the under secretary for arms control and international security.
- 11 Katherine Eban, “The Lab-Leak Theory: Inside the Fight to Uncover SARS-COV-2’s Origins,” *Vanity Fair*, June 3, 2021, <https://www.vanityfair.com/news/2021/06/the-lab-leak-theory-inside-the-fight-to-uncover-SARS-CoV-2s-origins>.
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- 13 US Department of State, *Adherence to and Compliance with Arms Control, Nonproliferation, and Disarmament Agreements and Commitments*, 46, April 2021, <https://www.state.gov/wp-content/uploads/2021/04/2021-Adherence-to-and-Compliance-With-Arms-Control-Nonproliferation-and-Disarmament-Agreements-and-Commitments.pdf>.
- 14 US Code Title 22 CHAPTER 35 SUBCHAPTER III § 2577.
- 15 S. Rpt. 106-43, 29, <https://www.congress.gov/congressional-report/106th-congress/senate-report/43/1?s=10&r=14314>.
- 16 C. Calisher et al., “Statement in Support of the Scientists, Public Health Professionals, and Medical Professionals of China Combatting COVID-19,” *Lancet* (February 18, 2020), [http://dx.doi.org/10.1016/S0140-6736\(20\)30418-9](http://dx.doi.org/10.1016/S0140-6736(20)30418-9).
- 17 Alice Latinne et al., “Origin and Cross-Species Transmission of Bat Coronaviruses in China,” *Nature Communications* (preprint, May 31, 2020), <https://www.biorxiv.org/content/10.1101/2020.05.31.116061v1>; Talha Burki, “The Origin of SARS-CoV-2,” *The Lancet*, 20 (August 2020), <https://www.thelancet.com/action/showPdf?pii=S1473-3099%2820%2930641-1>; Kristian G. Andersen et al., “The Proximal Origin of SARS-CoV-2,” *Nature*, 26, 450-55 (April 2020): <https://doi.org/10.1038/s41591-020-0820-9>.
- 18 Bruce Golding, “Prominent NYC Scientist Backtracks on COVID Origin Over ‘Disturbing Information,’” *New York Post* (June 4, 2021), <https://nypost.com/2021/06/04/prominent-nyc-scientist-backtracks-on-natural-origin-of-covid/>; Aaron Sibarium, “3 Scientists Drop Names From Lancet Statement on COVID Origins,” *The Washington Free Beacon* (July 8, 2021), <https://freebeacon.com/coronavirus/3-scientists-drop-names-from-lancet-statement-on-covid-origins/>; Eban, “The Lab-Leak Theory,” <https://www.vanityfair.com/news/2021/06/the-lab-leak-theory-inside-the-fight-to-uncover-SARS-CoV-2s-origins>.
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- 22 <https://www.defenseone.com/ideas/2019/08/chinas-military-pursuing-biotech/159167/>.
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## About the Authors

**Thomas DiNanno** is an adjunct fellow at Hudson Institute. Prior to joining Hudson, DiNanno served as a professional staff member on the House Permanent Select Committee on Intelligence and as acting assistant secretary of State of the Arms Control, Verification and Compliance Bureau from 2018-2021. Previously, DiNanno was assistant administrator at the Department of Homeland Security's Federal Emergency Management Agency where he oversaw nearly \$5 billion in counter-terrorism programs and national preparedness initiatives. DiNanno served as senior fellow for Homeland Security and Critical Infrastructure Protection at the International Assessment and Strategy Center from 2008-2017. From 2004-2007, DiNanno served as deputy assistant secretary for Critical Infrastructure Protection at the U.S. Department of Homeland Security where he was responsible for Homeland Security initiatives to identify and protect the nation's critical infrastructure. DiNanno served in the White House Office of Homeland Security as director of Corporate Relations from November 2001 to March 2003.

**Paula A. DeSutter** served as assistant secretary for the Bureau of Verification and Compliance from 2002 to 2009, with principal responsibility for the overall supervision of all matters relating to the verification of and compliance with international arms control, nonproliferation, and disarmament agreements. Ms. DeSutter served for four years as a professional staff member of the U.S. Senate Select Committee on Intelligence (SSCI). Prior to her position at the SSCI, she was a senior visiting research fellow at the National Defense University's Center for Counter-Proliferation Research. Ms. DeSutter held numerous positions in the Verification and Intelligence Bureau in the Arms Control and Disarmament Agency (ACDA).

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**Hudson Institute**  
1201 Pennsylvania Avenue, N.W.  
Fourth Floor  
Washington, D.C. 20004

+1.202.974.2400  
[info@hudson.org](mailto:info@hudson.org)  
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