



## **Introduction: the state of play of verification**

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The re-election in November 2004 of George W. Bush as President of the United States has been interpreted by many pundits as ruling out any possibility that the richest and most powerful country on earth will re-embrace multilateralism in the next four years. The US will continue, it is assumed, to prefer unilateral action or coalitions of the willing in which it assumes the leading role. In the particular case of multilateral verification and compliance there are justified fears that a second Bush administration will continue to play the part of verification spoiler and compliance zealot.

Indeed there now seems no chance that, in the next four years, the US will become party to the three products of multilateral diplomacy that were opened for signature in 1997, all of which it helped to negotiate but then abandoned: the Kyoto Protocol to the 1992 United Nations Framework Convention on Climate Change (UNFCCC); the Ottawa Landmine Convention; and the Comprehensive Nuclear Test Ban Treaty (CTBT). Except for the CTBT, where it continues to contribute to the establishment of the International Monitoring System (IMS), the US will thus remain outside of the accompanying monitoring and verification regimes for these legal instruments. It will also continue to oppose a verification regime for the 1972 Biological Weapons Convention (BWC). Not only that, but the US has suddenly announced that, in its view, a new accord long envisaged as the next step on the long road to nuclear disarmament, a Fissile Material Cut-off Treaty (FMCT), should proceed without verification. On the compliance front, having invaded Iraq on the spurious grounds that only military means, not intensified inspections, could guarantee compliance with the United Nations (UN) Security Council's disarmament demands, the US may be tempted to choose abrasive methods to deal with Iran and North Korea.

Depressing as these prospects are for multilateralists, there are some positive aspects of US policy and behaviour in respect of verification and compliance that are likely to persist and may be advanced. The US has strongly backed the provision of increased resources for International Atomic Energy Agency (IAEA) nuclear safeguards and nuclear security. It has also increased its political and financial support (although still not sufficiently) for the repatriation of fissionable and other nuclear materials from reactors, research institutes and other locations where they are no longer needed in order to reduce the danger of such materials falling into the hands of terrorists or other 'non-state actors'. It needs to take this further by involving the IAEA in the verification of excess stocks of fissionable material from warhead dismantlement by realizing the as yet unimplemented Trilateral Agreement that it has finalized with Russia and the IAEA. The US has also been at the forefront of efforts to encourage and induce states to comply with their obligations to adopt national implementation measures to prevent the proliferation of weapons of mass destruction (WMD) to non-state actors, including by sponsoring a Security Council resolution to that effect.

With regard to compliance, the US has laudably been willing to hold countries to account for not fulfilling their treaty commitments, in the process sweeping away some of the shameful reluctance to 'name names'—even when all of the world is aware that treaties are being violated. It is to the credit of the United Kingdom and the US that they ultimately sought to hold Iraq to account for failing to meet the obligations that the Security Council had legitimately imposed on it, having in previous years let such pressure subside. The rush to war in March 2003, based on flawed intelligence, occurred before UN verifiers had been given a chance to accomplish their mission (the intelligence/verification nexus is discussed by Brian Jones in this volume). Unfortunately this 'compliance strategy' is now widely seen as a mistake of historic proportions. The final empty-handed report, released in October 2004, of the Iraq Survey Group, an Australia/UK/US effort that sought after the war to second-guess the judgement of UN inspectors about the existence of WMD in Iraq, has served only to enhance the credibility of the UN inspection enterprise.

The US also has a mixed record when it comes to subjecting its allies, including Pakistan, to the same degree of scrutiny that it subjects its foes, such as Syria.

On the plus side, the US has supported a full investigation into the lapses of its ally South Korea in complying with the 1968 Nuclear Non-Proliferation Treaty (NPT), even if they pale in comparison to violations by North Korea. The US has also played an invaluable role in verifying and assisting in Libya's nuclear disarmament—essential because the IAEA, as a multilateral verification body, cannot be granted access to sensitive nuclear weapons information. In doing so the US has demonstrated the utility of quiet, patient diplomacy in achieving verified arms control and disarmament, in stark contrast to its Iraq misadventure. But again, this positive role has been tarnished by its initial attempt to marginalize the involvement of the IAEA, as the chapter in this volume by Jack Boureston and Yana Feldman shows. It is encouraging, though, that the Bush administration, after reassessing its intelligence analysis procedures in the wake of failures pertaining to Iraq's non-existent WMD, has recanted the accusations it has long made against Cuba of having a biological weapons (BW) programme in contravention of the BWC.

It is also the case that, important though the US role is in multilateral monitoring, verification and compliance—politically, technologically and financially—there is much that the rest of the world can and should accomplish without it or with only its partial, grudging involvement. The imminent entry into force of the Kyoto Protocol, after Russian ratification was finally secured in November 2004, means that all of the parties must now work to implement its elaborate verification provisions without the US. Even here the United States cannot entirely disentangle itself from the regime, as it remains party to the framework agreement, the UNFCCC, to which the Kyoto Protocol has been appended. Similarly, the International Criminal Court has been established without US involvement or support and has begun hearing its first case, against Uganda's rebel leaders, setting international legal precedents in the process.

### **The multilateral verification organizations**

In the arms control and disarmament field the major multilateral verification organizations are today in comparatively good shape. Indeed, apart from the BWC case, multilateral verification regimes are currently better governed, organized, funded and supported by requisite technical and technological means than ever

before. It is easy to overlook the enormous advances that have been made since 1972, when the NPT, the first major multilateral arms control treaty with a matching verification system, entered into force.

Contemporary multilateral WMD verification is a substantial international undertaking. In addition to the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC), which is restricted at the moment to dealing with Iraq (and is no longer permitted to deploy there), there are three global verification regimes monitoring and verifying the nonproliferation of nuclear weapons and the respective bans on nuclear weapons testing and chemical weapons. Recurrent annual expenditure on multilateral verification currently totals approximately \$300 million. More than 3,000 people are employed by international verification bodies, not counting the hundreds more employed by national implementing authorities

<b>Budgets (in US\$)</b>
Comprehensive Nuclear Test Ban Treaty Organization (CTBTO), Vienna, Austria 105 million (2005)
IAEA, Vienna 102 million (verification budget only) (2004)
Organisation for the Prohibition of Chemical Weapons (OPCW), The Hague, Netherlands 76 million (2004)
Climate Change Secretariat, Bonn, Germany 17.3 million (2005)
<b>Staff</b>
CTBTO 274
IAEA 2,200 (including non-verification staff)
OPCW 556
Climate Change Secretariat 100 (policy, technical and support staff)
<b>Inspectors</b>
CTBTO 0 (inspectors to be rostered only after entry into force)
IAEA 500
OPCW 200
Climate Change Secretariat No inspectors as such, but ad hoc Expert Review Teams make visits.

and regional organizations. Seven hundred full-time arms control/disarmament inspectors are employed by multilateral agencies, while a further 380 are on UNMOVIC's roster (over and above a notional number on the roster of the UN Secretary-General for investigations into the use of chemical and biological weapons (CBW)). By comparison, environmental treaties are relatively undeveloped: figures for the Climate Change Secretariat, which is responsible for administering both the UNFCCC and the Kyoto Protocol, are included in the table above to illustrate the point.

The great lacuna in the WMD area is BW: attempts to provide the BWC with a verification agency have failed utterly. Without strong US support and advocacy there is currently no prospect of this situation changing dramatically despite the earnest discussions taking place among BWC states parties in their current 'new process'. Only UNMOVIC has anything approaching what would be needed for BW and, as noted above, it remains mandated only to deal with Iraq. The UN Secretary-General's mechanism for investigating alleged use of CBW in violation of the 1925 Geneva Protocol is hyper-virtual, comprising only outdated lists of experts and analytical laboratories. Nonetheless, there are steps that could be usefully taken and that should be able to attract US support. One possibility is clearly to rejuvenate and upgrade the mechanism, especially since it has the endorsement of both the UN General Assembly and the UN Security Council. It could usefully draw on UNMOVIC's expertise, experienced inspector cadre, accredited laboratories and the wealth of lessons learned by the organization.

Another idea is to create a small BWC secretariat at least to give the treaty a minimal institutional home, to act as a clearing-house for treaty-relevant information and to handle more proactively the submission of the voluntary confidence-building measure (CBM) reports requested by successive BWC review conferences. Capacity-building with respect to national implementation of states parties' BWC obligations is another non-controversial area to be explored.

As to the broader question of the fate of UNMOVIC, it would clearly be tragic if its hard-won array of expertise and experience, especially that relating to BW and missiles, was lost to the international verification community. The Canadian government has sponsored a UN resolution, adopted by consensus in the First Committee of the UN General Assembly in October 2004, which calls for an expert study

of the issue of UN verification capacities. This is a useful first step, but it will not stop UNMOVIC atrophying through natural wastage of staff and the drying up of funding from the Iraq Oil for Food programme. Measures must be introduced in the meantime to keep UNMOVIC in place until a comprehensive assessment can be made of the potential use to which its personnel, resources and experience might be put.

### **The new focus on national implementation**

One of the rising new items on the multilateral agenda is the role of national implementation measures in ensuring full compliance with states' treaty obligations. Such a focus has enjoyed the full support of, and indeed has been partly driven by, the US, as one of its responses to the terrorist attacks of 11 September 2001. Although many treaties have long called for national implementation measures to ensure that proscribed activities do not take place anywhere on the territory of states parties, new attention is being paid to this in order to prevent non-state actors acquiring and employing WMD. Lisa Tabassi and Scott Spence nicely illustrate this trend in respect of chemical weapons in their chapter in this *Yearbook*.

The UN Security Council has now latched on to this issue by unanimously adopting resolution 1540 in April 2004, requiring all UN member states to adopt such national measures. This is a watershed development in international law in that it has been adopted as a mandatory requirement by the Security Council acting under Chapter VII of the UN Charter and in that it applies to all states, whether they are party to the relevant WMD treaty or not. Hence the resistance of states like Pakistan—which happened to be on the Security Council at the time—which is not a party to the NPT and which accused the Security Council of breaking new ground by attempting to 'legislate' for the international community. This ignores the fact that the Security Council has been 'legislating' in all sorts of areas since its inception in 1945, in the sense of setting international legal precedents and establishing legal norms.

Compliance with resolution 1540 does need to be carefully monitored if it is to be effective. A good start has been made through the requirement that all states report to a Security Council committee by 28 October 2004 on their progress

in compliance. Exactly what the 1540 Committee does with the information it receives remains to be seen. An excellent model would be the compliance monitoring arrangements established for a related resolution on counter-terrorism (resolution 1373 of 28 September 2001). The Counter-Terrorism Committee (CTC) has acquired a substantial expert secretariat and actually conducts visits to states to determine the veracity of their reports. Thorough and professional monitoring of compliance with mandatory Security Council resolutions is an idea whose time has come.

### **The reporting, monitoring and verification burden**

In addition to the scale of the international verification bodies themselves, a development that necessitates creative responses is the cumulative verification commitments that treaty regimes, in combination, require of states. These include a growing degree of transparency and a higher level of intrusion into sovereign national affairs. A state party to all of the major arms control and disarmament instruments is obliged: to provide information and accept safeguards on, and permit inspections of, its peaceful nuclear facilities and materials; to make declarations on and submit its chemical industry to inspections; and to become involved in the global nuclear test monitoring system, in all likelihood by hosting a CTBT monitoring station on its territory (as David Hafemeister explains in this volume). Such a state is obliged to have a national authority to ensure its compliance with the 1993 Chemical Weapons Convention (CWC), a nuclear safeguards office, and sizeable numbers of staff to fulfil various membership requirements, including attending verification conferences, facilitating and accompanying on-site inspections, filling out declarations and complying with voluntary CBMs, such as those sought from BWC states parties. At any time the state may be subject to special inspections under IAEA safeguards, complementary access under the Additional Protocol, challenge inspections under the CWC and, in future, challenge inspections under the CTBT.

If it is a developed country and party to the UNFCCC and the Kyoto Protocol it will have to have national systems to monitor and account for greenhouse gas emissions and to verify its reduction efforts, as described by Larry MacFaul in

this volume. As party to major human rights conventions the state will be obliged to report to the various monitoring committees, described in all their complexity by Patricia Watt in her chapter. Even voluntary or politically binding agreements, including those relating to small arms and light weapons, outlined by Helen Hughes, bring their own reporting obligations if states take them seriously, which they are under pressure from various sources, such as other governments and civil society, to do. International controls on fish stocks, again produce their own national implementation burdens, as illustrated by Judith Swan.

To add to this, under some of the relevant treaties the state will be required to enact national implementation measures, progress in which will be monitored by one of the verification agencies. Now, under Security Council resolution 1540 and other counter-terrorism-related resolutions, all UN member states are required to report in much greater detail and are subject to much greater scrutiny than before.

Even the richest of developed countries struggle to fulfil all of these requirements. If you are a country with a large nuclear, chemical or biotechnology sector, you will be subject to even more intense scrutiny, requiring an even greater investment of time and resources. The availability of resources to permit compliance is a significant factor to be considered when additional verification burdens are being contemplated: capacity-building for states unable to comply because of human, technical or financial barriers is vital if full treaty implementation is to be taken seriously. As has long been contemplated in the environmental and human rights areas, to date without much success, the rationalization of reporting requirements across various regimes should be considered, but only if it improves rather than detracts from verification.

### **Compliance mechanisms**

Compliance mechanisms for multilateral WMD regimes, in contrast to monitoring and verification arrangements, are underdeveloped, untested and surrounded by doubt and confusion. While a great deal of attention is paid to what information is to be sought and how it is to be collected, collated and analyzed, there is often a reluctance to be clear about how a determination of non-compliance is to be

made and what subsequent steps are possible if such a finding is reached. Even nuclear safeguards have not been free from this: confusion surrounding the possibility of 'special inspections' (essentially challenge inspections) has long dogged the IAEA.

The most lively current case of alleged non-compliance with a multilateral arms control treaty, that of Iran—covered by Wyn Bowen in this *Yearbook*—has so far made its way through the complex and lengthy IAEA compliance process as envisaged by the systems designers: following outside leads and its own investigations the IAEA has drawn the attention of its Board of Governors to the possibility that Iran is not complying with its safeguards and NPT obligations. The board has slowly increased the pressure on Iran to comply, issuing various requests, followed by demands, to the Iranian authorities, to which they have responded only partially satisfactorily. Technical means have been employed effectively by the agency to strengthen its case, while at the same time keeping an open mind in investigating Iranian counter-claims. A like-minded group of board members has attempted to engage Iran constructively, while another has issued veiled threats. This 'good cop, bad cop' routine is one way of seeking to deal with a non-compliance problem. If Iran fails to comply, however, the question of how it can be induced to do so will soon confront the UN Security Council, since the IAEA itself will have exhausted the range of 'carrots and sticks' at its disposal. Notably, Iraq and North Korea followed different trajectories when their non-compliance was determined.

In the case of chemical weapons there have been only a few cases of alleged non-compliance in which investigations took place, but these related to the Geneva Protocol and they all ended unsatisfactorily. There has been no experience to date of deliberate non-compliance with the CWC, even though many consider a challenge inspection long overdue. Similarly there has been no alleged violation of the CTBT in its current state of non-entry into force. With regard to the BWC, allegations ended in one unsatisfactory official compliance process and one inconclusive trilateral exercise involving the Soviet Union/Russia, the UK and the US. Clearly the BWC compliance process will always be at a disadvantage without an accompanying multilateral verification system with impartial monitoring and on-site inspection capabilities.

In the environmental area, it now remains to be seen how the elaborate compliance mechanisms and activities arduously negotiated for the Kyoto Protocol will

work in practice. Undoubtedly, as we have reported in previous *Yearbooks*, and as Larry MacFaul does in this one, there will be continuing work-in-progress evident in the climate change regime as it is fully implemented and matures. Compliance monitoring will need to be of a high order if states are to be convinced to take on ever more gruelling commitments to reduce greenhouse gas emissions.

Across all international treaty regimes there remains much work to be done to clarify how non-compliance cases should be dealt with and to broaden the range of incentives and disincentives that might be employed. A useful concept here is ‘compliance management’, which implies a clear and well considered process for bringing recalcitrant states back into compliance without backing them into a corner or causing them to lose face unnecessarily. This too should be a rising issue on the international agenda.

As ever, this *Yearbook* is the result of intensive work over many months by VERTIC researchers and staff members and external consultants and contributors. As editor my work has been made inestimably easier due to the quality of chapter writers’ manuscripts and the expertise of all who helped to prepare the final product. My thanks go to all involved, but in particular I am indebted to the masterly design, layout and sub-editorial skills of Richard Jones, the ‘wordsmithing’ of Eve Johansson, the organizational and technical abilities of VERTIC’s Administrator, Ben Handley, and the promotional efforts of VERTIC’s Information Officer and Networker, Jane Awford. Among the authors, who have laboured long and hard for little recompense, VERTIC is especially gratified in having the Director-General of the OPCW, Rogelio Pflirter, contribute the preface. He is the fourth head of an international verification body to do so—surely a vote of confidence in the role that non-governmental organizations like VERTIC can play in the multilateral verification enterprise.

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