

“Multilateral verification has evolved drastically over the past 25 years. The transition from theory to reality has provided lessons and experiences for all stakeholders.”

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B R I E F

Verifying multilateral regimes: uncertain futures

Yasemin Balci

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The conference

‘Uncertain futures: where next for multilateral verification?’ brought together 50 participants from about 20 countries, and several intergovernmental organizations, to discuss the operation and future direction of multilateral verification. This conference report aims to reflect the different views expressed during the three days at Wilton Park by providing a summary of the discussions.

We are grateful to Wilton Park for organizing this event and to the Governments of Norway and Sweden for providing the funding. We also want to thank our speakers for offering their thoughts and reflections, and to all participants for their active and stimulating participation.

The conference formed part of VERTIC’s 25-year anniversary. The organization is grateful to all directors, staff, interns and volunteers, past and present, for their dedication to multilateralism. This report does not necessarily reflect the views of the organization, its advisors or its trustees.

The speakers

The meeting heard presentations from a wide range of speakers with long experience in the field of multilateral verification.

Keynotes were delivered by:

Tibor Toth (CTBTO)

Vitaly Matsarski (UNFCCC)

The session speakers were:

Gregory Briner (OECD)

Trevor Findlay (Canada)

Nancy Gallagher (United States)

Ruth Greenspan Bell (United States)

Richard Guthrie (United Kingdom)

Edward Ifft (United States)

Gabriele Kraatz-Wadsack (UN)

Robert Mathews (Australia)

Andreas Persbo (United Kingdom)

Nicholas Sims (United Kingdom)

Mark Smith (United Kingdom)

Susi Snyder (The Netherlands)

Ralf Trapp (Germany)

William Walker (United Kingdom)

The speaker’s intergovernmental affiliation or country of residence is listed for identification purposes only.



Role, function and effect

Participants considered trust to be the most important foundation of verification, but noted that trust is also its principal outcome. Paradoxically, while the role of verification is to create trust among parties, without some trust to begin with parties may not agree to commit to a verification regime in the first place. Embryonic levels of trust are likely to deepen and strengthen as the parties carry out the verification measures they have committed themselves to. Occasionally, trust may even continue to grow when questions over compliance arise.

Consent and equality are two other important foundations. As states negotiate and agree on verification on an equal basis, they become accountable towards one another in their treaty relationship.

Negotiating verification provisions is a process which can be both de- and over-politicized. Verification is depoliticized when it has an objective, technical and legalistic meaning.

Verification can also be politicized. In such settings, available information about other state parties' compliance is perceived to be incomplete and unclear. More verification does not necessarily translate into more trusted information.

Most participants agreed that a multilateral verification regime should be based on objectiveness and equality in implementation. A relative minority argued that subjective elements—such as the intent of states—also ought to play a part. Some held that effective and efficient verification should be easy for those in compliance and costly for those who are not.

To some degree, the meeting also discussed whether verification systems should be 'smart', so that fewer re-

sources are spent in compliant countries, and more effort is invested in states that are non-compliant or under suspicion of being so.

The meeting recognized that multilateral verification has evolved drastically over the past 25 years. The transition from theory to reality has provided lessons and experiences for all stakeholders. The first multilateral verification regime, the Chemical Weapons Convention (CWC), has served as an example for other arms control agreements.

In addition, today much of the verification regime for the Comprehensive Nuclear Test Ban Treaty (CTBT) is already functioning, even though the treaty itself is not yet in force. The Biological Weapons Convention (BWC), which predates both the CWC and CTBT, continues to lack a verification regime. However, the discussion on verification of the BWC is set to continue in the future, though to what end is unclear.

Multilateral verification

Effective multilateralism tends to create order and legitimacy in international affairs. However, engaging in multilateralism is time-consuming. In addition, multilateral negotiations tend to gravitate towards lowest common denominator solutions.

While results of multilateralism may be transformative, the process itself is often conservative. It is guided as much by exercises of power as by rational arguments. National interest or uncooperative and disruptive negotiators can be spoilers. The process can also be exclusive; smaller states often find it hard to influence the proceedings because of their lack of resources or capacity. 'Minilateralism', negotiating with the smallest number of countries necessary to tackle a global issue,

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is currently a popular approach, but it has problems of its own. For instance, the United Nations Security Council provided an alternative to multilateral treaties by adopting one resolution (UNSCR 1540) which requires all Member States to enact national laws combatting weapons of mass destruction. Presently, there is a debate on whether the so-called Fissile Material Cut-Off Treaty should be discussed in a unilateralist setting. Despite this, negotiating treaties in a multilateralist setting is likely to continue in the twenty-first century.

Participants observed some differences in multilateral verification in arms control and environment communities. Some argued that the emphasis in the arms control field is on proving non-compliance, while in the environmental field the goal is to prove compliance.

There is also more attention to the distinction between developing and developed countries in the environment community. For many, climate change agreements are not about the environment, but about (sustainable) development and economics.

Verification language

Participants also addressed the language of verification. Closely-related words can have different meanings. For example, participants asked whether verification is a subset of compliance monitoring or whether monitoring is a subset of verification?

There is a tendency to ignore the word ‘verification’ and to use more ‘diplomatic’ terms instead. For example, the Cancun agreement uses the word ‘review’ for verification, ‘national communications’ for reports and ‘a question of implementation’ for a violation. Some suggested that avoid-

ing any use of the term ‘verification’ is not a solution as it will not change any underlying concerns.

Others believed there was too much focus on the word ‘verification’ and that more attention should be afforded to issues of compliance with international obligations instead.

Verification language can both confuse and clarify a debate on compliance. For example, reports that provide information on a party’s compliance sometimes do not state conclusively whether the country is ‘violating’ any provisions of the agreement or not. It is not obvious to the other parties how they should interpret this and what the consequences should be.

Language used in discussions on the BWC, however, adequately reflects the status quo. Use of the phrase ‘verification protocol’ is problematic, but there is now the aim to ‘strengthen’ the convention, a word that could not be mentioned a few years ago.

Acceptance

Participants pointed out that political acceptance of verification is cyclical by nature. In general, acceptance depends on variables such as the state of domestic politics, technological developments and the prevailing international atmosphere.

The 1990s were characterized by a high acceptance of multilateral verification. In the following decade, powerful states disfavoured legally-binding agreements in arms control. High tolerance of multilateral verification seems to occur in historical ‘windows of opportunity’. That is, rare moments where interests, ideas and relationships are aligned at both the domestic and international level. These windows of opportunity may be few and far between. However, it remains important to prepare for them by continuously

exploring and examining potential solutions. If these are not considered, a window of opportunity could open and close without negotiators being able to benefit from it. The preparatory work itself can also help open such windows.

Unforeseen incidents have effects too. The nuclear crisis at Japan's Fukushima power plant has already led to policy shifts in Europe. Germany has expressed its wish to close its nuclear power plants. In contrast, the drive to act against climate change is still lacking in many parts of the world. Since the consequences of climate change will not appear until the distant future (or are already arising in 'other' parts of the world), there is little motivation to act now.

Some participants stated that treaties often need champions to push for their acceptance, and to ensure their proper implementation. Treaty negotiations receive much attention, but the implementation period needs at least as much consideration.

To make the interpretation of the treaty and its implementation in national legal orders as straightforward as possible, definitions have to be clear and unambiguous. Of course, it may also be possible to change the legally-binding agreements underpinning verification measures. Proposals and ideas to this end matter. Some treaties also need tightening after their conclusion. For example, the United Nations Framework Convention on Climate Change is a framework treaty in need of additional content.

Acceptance will also depend on capacity and costs. International agreements can require states to gather national data, which can make some states struggle to keep up with the reporting. The costs related to the continuous monitoring of agreements and period-

ic reporting can be high. For example, setting up the CTBT's monitoring stations and communications infrastructure constituted an investment of one billion US dollars. On a different note, acceptance can also be influenced by cultures (that is, the willingness to engage with verification), which exists more in some countries than in others.

Acceptance does not play a role in rare instances of UN Security Council-mandated verification. UNSCOM in Iraq, for instance, had intrusive methods and access rights at its disposal. The host country's views did not matter. However, such inspections are likely to be exceedingly uncommon (perhaps only used in countries which have been comprehensively militarily defeated).

Uncertainty

How much verification is necessary to verify compliance with treaty obligations? The answer to this will probably depend on the object of verification and on those tasked to judge compliance. The provision of accurate information may become a problem. State parties to a verification regime will need to provide information to make verification possible, but the more information they need to provide, the harder it might be for them to agree to do so.

The question of 'how much is enough' also highlights the issue of uncertainty. Verification regimes will have inbuilt errors or will not be able to explain the whole truth. The question is how to deal with this. What uncertainty levels are acceptable?

On the other side of the argument, acceptable uncertainty is a question about acceptable risk. From that perspective, verification processes are risk management exercises.

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For example, climate change agreements often incorporate elements of risk management and collective insurance.

Participants queried whether verification reduces risk or only measures it. The answer might depend on the purpose of the regime. In climate change efforts, nearly achieving set targets is enough for compliance with the agreement. The risk that climate change poses is then reduced. In some arms control efforts, however, complete compliance is often desired. Partial compliance will not remove the risk posed by undeclared weaponry. And the more powerful the weapon, the more risk involved with undeclared arsenals and other forms of cheating.

Hard verification data can be used to measure uncertainty and risk. Since there are no rules of evidence (similar to those in a court of law) about compliance judgments and often no direct evidence, the role of science is to make sense of the data. Science can provide the necessary independent technological tools. Moreover, scientific evidence, like DNA evidence in a court of law, is hard to challenge. However, scientific work can involve errors. Peer-review mechanisms should therefore be in place.

As discussed above, subjective elements, such as intent, were among other issues considered at the conference. In a court of law, only the intent relating to the crime under consideration is relevant. Past behaviour is taken into account, but it is not the matter under investigation. In addition, focusing on intentions may open up the system for double standards.

The question can also be taken further. To what extent should one take *future* intentions into account?

Intergovernmental actors

Conference participants compared the different international organizations working on verification.

The CTBT is not yet in force, but the Preparatory Commission for the CTBT Organization (CTBTO), the International Monitoring System and International Data Centre, major parts of the treaty’s verification regime, are already functioning well.

Some participants noted that the CTBTO is already monitoring compliance with the norm against nuclear testing. The system is also used to monitor the activities of non-state parties, such as the nuclear tests of North Korea in 2006 and 2009.

Participants also discussed the different organizational cultures of these organizations. For instance, the Organisation for the Prohibition of Chemical Weapons (OPCW) underscores its accomplishments while the International Atomic Energy Agency (IAEA) acts more cautiously.

The conference felt that organizational culture is closely linked to the organizational mission. The IAEA has the broadest mandate, and thus has to reconcile a large number of competing interests. The OPCW mandate is more restricted. In the biological field, no such similar organization exists.

Staff members of international organizations play a key role. Their integrity is important for preserving the confidence of the member states in their work. It is desirable to have permanent staff, because they are more likely to comply with their confidentiality agreements and constitute a more diverse group than experts on loan from what are usually Western countries.

Non-governmental actors

Discussions addressed the role of civil society in verification. Participants agreed that NGOs were helpful in translating and linking complex agreements to the public and providing ideas to governments through relevant, timely and accurate research.

Some questioned whether NGOs should be campaigning in cases of questionable compliance based on solely open-source information. They considered it a responsibility of states to judge on compliance, not one of international organizations or NGOs. They also spoke on legitimacy and accountability. Participants noted that NGOs remained independent through diversity in funding and creativity in their activities.

One participant remarked that NGOs can sometimes be as secretive as states. While their accounting is transparent, they might keep their sources and methodology to themselves. NGOs are sometimes seen as Western entities, but recent developments in North Africa and the Middle East have highlighted the presence and importance of the region's own civil society organizations.

NGOs can also be self-selecting. They can pick the issues they want to focus on, the countries they want to work with and the extent of their own engagement with local actors.

Most participants agreed that NGOs play an important role in promoting multilateral verification. Their analysis can feed in new ideas. As independent organizations, they can pick and choose their activities, but their legitimacy, credibility and survival depends on the accuracy, strength and relevance of their work.

The verification 'community'

After a three-day discussion on verification, participants asked whether a verification 'community' exists: that is, a community with broadly-shared goals and a particular language.

They agreed that there is not much cross-fertilization between fields such as arms control, environment and even finance, but that they face similar challenges.

The same is true for officials working on verification issues in government. Participants also noted a decline in public awareness of verification and a lack of familiarity with the concept among students.

Industry is also part of the community, but it seems to fight verification and legislation, only to adapting when it seems likely that verification measures will become reality.

Of course, some wondered whether it is possible to have too much community. Creating exclusive clubs leads to a constrained political outlook, and the real risk of so-called group think. It is important, therefore, that any verification community remains open to external ideas and influences.

Finally, how to verify an obligation is not important if the obligation itself is worth very little. The primary focus of negotiations is to create a useful norm or an effective prohibition. The community should keep in mind that the objective, and the obligations, whether they are focused on arms proliferation or climate change, should drive thinking on verification, not the other way around.

To continue this discussion and to help build a verification community, VERTIC intends to organize further meetings in the coming years.

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About this paper

This brief summarizes the discussions and conclusions of participants attending VERTIC's recently-held 25-year anniversary conference. The meeting, 'Uncertain futures: where next for multilateral verification?', discussed the operation and future direction of multilateral verification regimes. It was hosted by Wilton Park in Steyning, West Sussex, from 1-3 June 2011.

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Building trust through verification

VERTIC is an independent, not-for-profit non-governmental organization. Our mission is to support the development, implementation and effectiveness of international agreements and related regional and national initiatives. We focus on agreements and initiatives in the areas of arms control, disarmament and the environment, with particular attention to issues of monitoring, review and verification. We conduct research and analysis and provide expert advice and information to governments and other stakeholders. We also provide support through capacity-building, training, legislative assistance and cooperation.

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