The Law of Arms Control: International Supervision and Enforcement  
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General features of supervisory mechanisms in multilateral arms control treaties

1. Introduction

In the previous chapter, a theory has been presented of the process of international supervision in arms control law, pointing at the different phases and methods of supervision and at the role of supervising bodies. In this chapter, this theory will be applied to a number of multilateral arms control treaties. The treaties selected for this purpose are: the Antarctic Treaty, the Outer Space Treaty, the Moon Agreement, the LTBT, the NPT, the Sea-Bed Treaty, the BWC, the ENMOD Convention, the Inhumane Weapons Convention, the APM Convention, the Treaty of Rarotonga, the Treaty of Tlatelolco, the Pelindaba Treaty, the Southeast Asia Nuclear Weapon-Free Zone Treaty and the CFE Treaty. The treaties are

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470 See the Antarctic Treaty (Signed at Washington, on 1 December 1959) 402 UNTS 71; Treaty on principles governing the activities of States in the exploration and use of Outer Space, including the Moon and other Celestial Bodies (Opened for signature at Moscow, London and Washington, on 27 January 1967), 610 UNTS 205; Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (Opened for signature on 18 December 1979), annexed to UNGA Resolution 34/68, 5 December 1979; Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water (Signed at Moscow, 5 August 1963) 480 UNTS 43; Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-bed and the Ocean Floor and in the Subsoil thereof (Concluded at London, Moscow and Washington on 11 February 1971) 955 UNTS 115; Treaty on the Non-proliferation of Nuclear Weapons (London, Moscow, Washington, 1 July 1968), 7 ILM 809 (1968); Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxic Weapons and on their Destruction (signed at London, Moscow, Washington, 10 April 1972), 1015 UNTS 163; Convention on the Prohibition of Military or any other Hostile Use of Environmental Modification Techniques (adopted by the UNGA on 10 December 1976), 1108 UNTS 151; Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (adopted at Geneva, 10 October 1980), 19 ILM 1523; Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction, 36 ILM 1507 (1997); Treaty for the Prohibition of Nuclear Weapons in Latin America (Done at Mexico, Federal District, on 14 February 1967), 634 UNTS 281, as amended by Resolution 290 (VII) of the General Conference of OPANAL, at Mexico City on
categorised as 'global arms control treaties that relate to uninhabited territories', 'other global arms control treaties' and 'regional arms control treaties', the latter category comprising the four NWFZ Treaties and the CFE Treaty.

The focus of this chapter is on the analysis of the methods and the overall institutional design of supervisory mechanisms in the arms control treaties selected, in order to find their common characteristics. To make a comparison between the supervisory mechanisms possible, the analysis of the texts of the treaties will be undertaken starting from the theory described in the previous chapter. Each phase of the supervisory mechanism, i.e. monitoring, verification, dispute settlement and correction/enforcement, as well as the interpretative element, will be described insofar as it can be found in the text of the treaty concerned. Conclusions as to the general features of each phase which result from the comparative analysis of the supervisory mechanisms of the different treaties are presented at the end of this chapter.

2. Monitoring

2.1 Monitoring provisions in global arms control treaties that apply to uninhabited territories

Antarctic Treaty. In the Antarctic Treaty, the Contracting Parties agree to exchange information regarding plans for scientific programs in Antarctica, exchange and make freely available scientific observations and results and exchange scientific personnel between expeditions and stations. The purpose of this is to promote international co-operation in scientific investigation between the Contracting Parties and between those Parties and those Specialised Agencies of the UN and other international organisations having a scientific or technical interest in Antarctica (Art. III). Even though this free exchange of information is not concerned with checking compliance with a legal obligation, it may facilitate the performance of subsequent phases of the supervisory process. Art. VII(5) provides that each

Contracting Party shall, at the time when the Treaty enters into force for it, inform the other Parties and thereafter shall give them notice in advance, of its expeditions to and within Antarctica, its stations in Antarctica and its military personnel or equipment intended to be introduced by it into Antarctica. The distinction between the obligations of Art. III and VII(5) has become blurred in practice with the multiplication and standardisation of exchanges of information. The exchange of information and consultations between the Contracting Parties on matters of common interest pertaining to Antarctica, as well as the formulating, considering and recommending to their Governments of measures in furtherance of the principles and objectives of the Treaty, are the purposes of the meeting of Representatives of the Contracting Parties (Art. IX(1)). The meetings of the Contracting Parties, which also guide to a large extent the (outcome of) verification, can be described as the heart of the system. The Recommendations made by these meetings are not amendments to the Treaty but must, as stipulated in the relevant Recommendations themselves, be approved in accordance with the legal and constitutional procedures of the Contracting Parties; every State meaning to become a participant in the consultative meetings must declare its intention to apply the Recommendations and to be bound by them. These Recommendations form part of the overall structure of co-operation established by the Treaty.

*Outer Space Treaty.* The States Parties to the Outer Space Treaty shall be guided by the principle of co-operation and mutual assistance and shall conduct all their activities in outer space with due regard to the corresponding interests of all other States Parties to the Treaty (Art. IX). If a State Party has reason to believe that an activity planned by it or its nationals would cause potentially harmful interference with activities of other States Parties in the peaceful exploration and use of outer space it will undertake consultations before proceeding with the activity. If another State Party undertakes potentially harmful activities, a State Party may request consultation concerning the activity or experiment. In order to promote international co-operation in the peaceful exploration and use of outer space, States Parties agree to inform the UNS-G as well as the public and the international scientific community of the nature, locations and results of their activities in outer space (Art. XI). This exchange of information might reveal any activities in the exploration and use of outer space contrary to the obligations contained in Art. III and IV, but probably cannot be considered as an independent mechanism for the control of compliance with those articles.  

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471 Most of the supply of information has been covered by Recommendation VIII.6 of the meeting of the Contracting Parties. See Cottereau (1991), p. 71.

472 Art. III provides that States Parties shall carry on activities in accordance with international law, including the UN Charter, in the interest of maintaining international peace.
Moon Agreement. The Moon Agreement contains many articles that relate to the principle of co-operation and mutual assistance in all the activities of the States Parties concerning the exploitation and use of the moon (Art. 4(2)). States Parties shall inform the UNS-G as well as the public and the international scientific community of their activities concerned with the exploration and use of the moon and of any phenomena they discover in outer space (Art. 5(1) and (3)). This type of provision of information is not connected with direct supervision of compliance with the basic ('peaceful use') obligations of the treaty.473

2.2 Monitoring provisions in other global arms control treaties

LTBT. The LTBT has no methods whatsoever to control compliance with the obligation to ban nuclear weapon tests in the atmosphere, in outer space and under water.474 The treaty even has no provision on exchange of information. In the Cold War years, any information on nuclear test explosions was to be kept secret. Monitoring (and verification) of compliance with the Treaty was presumed to be performed unilaterally with NTMs, mainly through the use of satellites.475

Sea-Bed Treaty. In the preamble to the Sea-Bed Treaty it is stated that the States Parties to the Treaty, while recognising the common interest of mankind in the progress of the exploration and use of the sea-bed and the ocean floor for peaceful purposes, are convinced that it constitutes a step towards a treaty on general and complete disarmament under strict and effective international control. The treaty contains no provisions on

and security and promoting international co-operation and understanding. Art. IV provides, inter alia, that States Parties undertake not to place in orbit or install on planets weapons of mass destruction, that they use the moon and other celestial bodies for peaceful purposes only and that the establishment of military bases, installations and fortifications, the testing of any type of weapons and the conduct of military manoeuvres on celestial bodies shall be forbidden. The 'use for peaceful purposes' has been interpreted by the superpowers as meaning non-aggressive rather than non-military. See Shahua (1991), p. 125.

473 In the case of the Moon Agreement, the control mechanism has been laid down in Art. 15 (see infra). The provisions on the exchange of information limit the obligation to provide information to 'the greatest extent feasible and practicable' (Art. 5(1) and 6(3)). This information will not be sufficient to enable States Parties to mutually check compliance with the basic obligations of the treaty.

474 'Limited' Test Ban Treaty refers to the fact that the Treaty does not prohibit underground testing and therefore is limited in its scope. It is also known as the Partial Test Ban Treaty or The Moscow Agreement.

475 The USA brought into orbit its first so-called 'Vela-satellite' for monitoring purposes one week after the LTBT entered into force. Since 1984, the USA is deploying LTBT-monitoring and (at the same time) verification systems aboard Global Positioning System (GPS) - navigation satellites. See Goldblat (1991), p. 97.
exchange of information; the Parties to the Treaty undertake to continue negotiations in good faith concerning further measures in the field of disarmament for the prevention of an arms race on the sea-bed, the ocean floor and the subsoil thereof (Art. V). It seems that it would have made little difference if this latter provision had been part of the preamble; in practice, any progress in the implementation of this article could hardly be ‘measured’. Art. III(5) of the Sea-Bed Treaty inter alia provides that States Parties can make use of their own means for the purpose of verifying compliance. Although this paragraph is part of an article that deals primarily with verification, NTMs in many circumstances are used as monitoring-methods. Furthermore, at the third Review Conference of the Treaty (Cf. Art. VIII), the UNS-G was requested to report on technological developments, with the assistance of appropriate expertise and States Parties.\textsuperscript{476}

\textit{NPT}. The NPT has itself no explicit provisions on exchange of information on a regular basis. The exchange of scientific and technological information for the peaceful uses of nuclear energy (Art. IV(2)) can be regarded as an incident-independent exchange of information which might reveal actions contrary to the basic obligations of the treaty.

\textit{BWC}. The BWC has no provisions on exchange of information or other provisions for the purpose of monitoring compliance. Art. X of the BWC provides that States Parties undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and information for the use of bacteriological (biological) agents and toxins for peaceful purposes. Also co-operation in this field will take place between the Parties in a position to do so. It should be noted that under the BWC, Review Conferences have been utilised to request the provision of information from the States Parties, also on the implementation of Art. X of the Convention as well as on new scientific and technological developments relevant to the Convention. Moreover, as a result of the Second Review Conference, the role of the UNS-G in the operation of the Convention was further strengthened and modalities for a bi-annual exchange of information and data were drawn up.\textsuperscript{477} Although the treaty provisions as such do not deal with monitoring compliance, the Third Review Conference introduced several confidence-building measures and agreed that the exchange of data and information regarding activities with biological agents and toxins be sent on an annual basis to the UN Department for Disarmament Affairs.\textsuperscript{478}


\textsuperscript{478} See Final Document BWC (1991), p. 3-5.
ENMOD Convention. The ENMOD Convention couples undertakings to consult and co-operate to problems which may arise in relation to the objectives of, or in application of the provisions of, the Convention (Art. V). No incident-independent exchange of information is prescribed. The ‘fullest possible exchange of scientific and technological information on the use of environmental modification techniques for peaceful purposes’, which the Parties undertake to facilitate and in which they have the right to participate (Art. III(2)), could probably reveal non-compliance with the basic obligations of the treaty. The first Review Conference of the ENMOD Convention affirmed the necessity of continuous monitoring of the observance of its provisions and the development of NTMs for that purpose.479

Inhumane Weapons Convention. The Inhumane Weapons Convention is a Convention that manifestly distinguishes itself from other arms control treaties. It clearly has as its first objective to protect non-belligerents, out of humanitarian concerns. The treaty is an ‘umbrella treaty’; the prohibitions on particular types of weapons have been laid down in Protocols. The High Contracting Parties undertake to disseminate the Convention as widely as possible in their respective countries and to include the study thereof in their programmes of military instruction, so that those methods may become known to their armed forces (Art. 6). Protocol II, on prohibitions or restrictions on the use of mines, booby-traps and other devices, prescribes in Art. 9 that after the cessation of active hostilities the Parties shall endeavour to reach agreement on the provision of information and technical and material assistance necessary to remove or otherwise render ineffective minefields, mines and booby-traps placed in position during the conflict. Pursuant to Art. 13(4) of the Amended Protocol II on mines, booby-traps and other devices, the High Contracting Parties undertake to consult and co-operate in an annual conference and shall provide annual reports to the Depository, who shall circulate them to all High Contracting Parties in advance of the annual conference.

APM Convention. The APM Convention devotes an article to international co-operation and assistance. Pursuant to Art. 6(2), each State Party undertakes to facilitate and shall have the right to participate in the fullest possible exchange of equipment, material and scientific and technological information concerning the implementation of the Convention. Besides several pledges to provide mutual assistance if possible, the Convention refers to the UN database on mine clearance, to which each State Party undertakes to provide information (Art. 6(6)). Next to this, as a transparency

measure each State Party shall annually report to the UNS-G, *inter alia*, on the national implementation measures it has undertaken, on the total of APM it owns or possesses or has under its jurisdiction or control, and on the types and quantities of all APM destroyed after entry into force of the Convention for it. The UNS-G shall transmit all such reports received to the States Parties (See Art. 7).

2.3 Monitoring provisions in regional arms control treaties

2.3.1 Monitoring provisions in Nuclear Weapon Free Zone Treaties

A group of related treaties are the NWFZ Treaties. The 1971 Sea-Bed Treaty, which establishes a zone free of weapons of mass destruction in uninhabited territory, is discussed along with the other treaties related to uninhabited territories. 480

*Tlatelolco Treaty*. The first of the NWFZ Treaties, drawn up even before the NPT explicitly confirmed the right of any group of States to conclude regional treaties in order to assure the total absence of nuclear weapons in their respective territories (Art. VII NPT), is the Tlatelolco Treaty. Pursuant to Art. 14(1), the Contracting Parties shall submit to the Agency and to the IAEA, for their information semi-annual reports stating that no activity prohibited under this treaty has occurred in their respective territories. 481 The Contracting Parties shall simultaneously transmit to the Agency a copy of the reports submitted to the IAEA which relate to matters that are relevant to the work of both Agencies (Art. 14(2)); the information furnished by the Contracting Parties shall not be disclosed or transmitted to third Parties by the addressees of the reports, except when the Contracting Parties give their express consent (Art. 14(3)). 482 This latter provision, which was introduced with the amendment of the Treaty in 1992 seems to meet the general critique that the Treaty lacks a system providing for protection of the information received pursuant to its procedures. 483 Procedures shall be established for distributing to all Contracting Parties information received by the Agency from governmental sources and such information from non-governmental

480 Art. IX of the Sea-Bed Treaty states that the provisions of the Treaty shall in no way affect the obligations assumed by States Parties to the Treaty under international instruments establishing zones free from nuclear weapons.
481 The 'Agency' referred to in this paragraph is the Agency for the Prohibition of Nuclear Weapons in Latin America (OPANAL) that is established by the Tlatelolco Treaty (Art. 7).
482 Art. 14(2) and (3) have been amended by Resolution 290 (VII) of the General Conference of OPANAL, on 26 August 1992. See CD/1196, 8 April 1993. Art. 14 (3) is entirely new; the old par. 3 provided only that the States Parties must also transmit to the Organisation of American States, for its information, any reports that might be of interest to it.
483 On this critique, see Estrada Oyela (1991), p. 152.
sources as may be of interest to the Agency (Art. 11(5)). OPANAL shall be responsible for the holding of periodic or extraordinary consultations among Member States on matters relating to the purposes, measures and procedures set forth in the Treaty and to the supervision of compliance with the obligations arising there from (Art. 7(2)). Periodic consultations provide the opportunity to the Member States to monitor compliance with the basic obligations of the Treaty. Extraordinary consultations will be held on account of some particular event providing the 'trigger' for these extraordinary consultations (thus starting the process of verification).

Rarotonga Treaty. The Rarotonga Treaty establishes a zone free of nuclear weapons in the South Pacific. It states very clearly that the Parties establish a control system for the purpose of verifying compliance with their obligations under this treaty (Art. 8). The control system shall comprise, inter alia, reports and exchange of information as provided for in Art. 9. Art. 9(1) provides that each Party shall report to the Director of the South Pacific Bureau for Economic Co-operation ('the Director') - the Depository of the Treaty - any significant event within its jurisdiction affecting the implementation of the Treaty. The Parties shall endeavour to keep each other informed on matters arising under or in relation to the treaty. They may exchange information by communicating it to the Director, who shall circulate it to all the Parties (Art. 9(2)). The Director shall report annually on the status of the treaty and matters arising under or in relation to it (see Art. 9(3)). All these reports may themselves trigger verification activities, but they are not part of the verification process because the exchange of information and the annual reports are not 'incident related' and because the reports on significant events are not reactions to suspicious events but merely indicate that a suspicious event may have occurred. These reports can be used as sources of information in the fact-finding stage of verification.

Pelindaba Treaty. The Organisation of African Unity concluded its work on the text of the African Nuclear Weapon-Free Zone Treaty in Pelindaba, in 1995. For the purpose of ensuring compliance with their undertakings under the Pelindaba Treaty, the Parties agree to establish the African Commission of Nuclear Energy as set out in Annex III to the treaty (Art. 12(1)). Each Party shall submit an annual report to this Commission on its nuclear activities as well as other matters relating to the treaty, in accordance with the format for reporting to be developed by the Commission. Each Party shall promptly report to the Commission any significant event affecting the

484 This will be done by the General Secretary, the chief administrative officer of the Secretariat, which is one of the organs of the Agency (Art. 8(1) and 11(1)).
implementation of the treaty (Art. 13(1-2)). The Commission shall develop a format for reporting by States required under this article (Annex III(3)). These reports and exchanges of information are ongoing and not incident related. Whereas Art. 13(2) applies to the occasion of a ‘significant event’, there is a special complaints procedure available, established under Annex IV of the treaty, in case a Party considers that there are grounds for a complaint that another Party is in breach of its obligations under the treaty (Annex IV, Art. 1). It can be upheld that ‘significant events’ may constitute a trigger for the verification mechanism of the treaty. Art. 13 provides for a legal basis upon which Parties can signal that something might be wrong; an indicator that further investigation in the process of verification may be desirable.

**Southeast Asia NWFZ Treaty.** The fourth large NWFZ in the world was established in December 1995 by the Treaty on the Southeast Asia Nuclear Weapon-Free Zone, or Bangkok Treaty, which was negotiated within the framework of ASEAN. It contains monitoring provisions on reports and exchange of information (Art. 11) which read: “1. Each State Party shall submit reports to the Executive Committee on any significant event within its territory and areas under its jurisdiction and control affecting the implementation of this treaty. 2. The States Parties may exchange information on matters arising under or in relation to this treaty.”

**2.3.2 Monitoring provisions in the CFE Treaty**
The CFE Treaty is a regional treaty which deals with conventional weapons in a comprehensive manner. Art. XIII provides that for the purpose of ensuring verification of compliance with the provisions of the treaty, each State Party shall provide notifications and exchange information pertaining to its conventional armaments and equipment in accordance with the Protocol on Information Exchange. The provision of information will take

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486 The ‘Executive Committee’ mentioned in the first par. of Art. 11 is a subsidiary organ of the Commission for the Southeast Asia Nuclear Weapon-Free Zone established in Art. 8 of the Treaty. See Art. 9 of the Southeast Asia NWFZ Treaty.

487 The ‘Protocol on notification and exchange of information’ contains procedures and provisions regarding notification and exchange of information pursuant to Art. XIII of the CFE Treaty. It specifies in six sections what kind of information is required with regard to the structure of the forces, the overall holdings in each category of conventional armaments, the location and numbers of conventional armaments in service and those not in service with conventional armed forces, objects of verification and declared sites and the location of sites from which conventional armaments have been withdrawn. Section VII relates to timetables for the provision of information in section I to V of the Protocol. Sections VIII to XIII also specify what kind of information has to be provided and relate to the format of the provision of information and other notifications pursuant to the Treaty. The Agreement on Adaptation CFE (1999) in Art. XIII(1) provides that each State Party should also provide notifications and exchange information pertaining to the conventional armaments and equipment of other States Parties that it permits to be present on its territory.
place on the 15th day of December of every year after the year in which the Treaty entered into force (1992), with the information effective as of the first day of January of the following year. The provision of information pursuant to Art. XIII of the CFE Treaty has to be repeated every year by the Parties as an ongoing obligation. Such notifications and exchange of information shall be provided in written form. The States Parties shall use diplomatic channels or other official channels designated by them, including in particular the OSCE Communications Network. Each State Party shall be responsible for its own information; receipt of such information and of notifications shall not imply validation or acceptance of the information supplied (Art. XIII(3)). This provision makes clear that verification of compliance is distinct from the mere supply of information and the notifications. The establishment that the information supplied is correct and that the Party therefore is in compliance with its related treaty obligations is a possible outcome of the verification process. As long as this process has not been entered, States Parties necessarily are individually responsible for the accuracy and completeness of their own information. The notifications however are not devoid of legal implications. The notifications on the limitation of conventional armed forces in accordance with Art. VII remain 'valid' until the date specified in a subsequent notification (Art. VII(2)). Any change in the maximum levels for holdings of a State Party shall be notified by that State Party to all other States Parties at least 90 days in advance of the date specified in the notification, on which such a change ‘takes effect’ (Art. VII(3)). The use of the words ‘valid’ and ‘takes effect’ implies that the notifications have legal effect. States can be held responsible for violating the Treaty if verification reveals that their notification of the maximum level for their holdings differs from the number of conventional armaments they actually possess. States Parties shall consult in their groups in order to ensure that the maximum levels for holdings notified do not exceed the limitations set forth in Arts. IV, V and VI of the Treaty (Art. VII(7)). Reference to notifications (in accordance with the Protocol on Information Exchange) can also be found in Art. VIII to XII. Under the Agreement on Adaptation of the CFE Treaty (1999) most of those notifications are no longer required. For example, the Adaptation Agreement introduces an entirely new Art. VII which deals with military exercises and temporary deployments by which the agreed ceilings may be temporarily exceeded. In that case, an explanatory report shall be provided to the JCG by the State Party involved, to be updated subsequently every two months until the ceilings are no longer exceeded.

488 See ‘Protocol on Notification and Exchange of Information’ to the CFE Treaty, Section VII, 1(c); Agreement on Adaptation CFE (1999), Section VII(1A, B).
489 ‘...to be established by a separate arrangement.'; see Art. XIII(2) and Art. XVII. From Art. XVII of the Agreement on Adaptation CFE (1999), it becomes clear that what is meant here is the - by now established - OSCE Communications Network.
The CFE Treaty furthermore allows the use of National (or multinational) Technical Means of verification. They are meant however to supplement the inspection and aerial observation procedures in Art. XIV of the Treaty (see Art. XV(1)). The notifications and exchange of information prescribed in the CFE Treaty are used as methods of monitoring. The provision of information is not trigger-related and the obligation to provide information is ongoing and repetitive. This information and the notifications will be used as sources for the stage of fact-finding within the verification process. Eventually, these provisions thus contribute to the purpose of ensuring verification of compliance, like the articles on NTMs (Art. XV) and on inspections and aerial observations (Art. XIV) do.

3. Verification

3.1 Verification provisions in global arms control treaties that apply to uninhabited territories

*Antarctic Treaty.* The Antarctic Treaty has clear provisions on verification in Art. VII. In order to promote the objectives and ensure the observance of the treaty, each Contracting Party shall have the right to designate observers to carry out any inspection provided for by Art. VII.\(^{490}\) Observers shall be nationals of the Contracting Parties which designate them.\(^{491}\) Each observer shall have complete freedom of access at any time to any or all areas of Antarctica (Art. VII(2)). It was possible to grant this very wide and unrestricted freedom of access to the observers because in Antarctica there can be no infringement on sovereign territory. But also all areas of Antarctica, including all stations, installations and equipment within those areas, and all ships and aircraft at points of discharging or embarking cargoes or personnel in Antarctica, shall be open at all times to inspection.

\(^{490}\) 'Each Contracting Party' has a qualification in the Treaty text. Only those Contracting Parties whose representatives are entitled to participate in the meetings referred to in Art. IX of the Treaty shall have the right to carry out inspections. Article IX(1) makes clear that this includes the Parties that are named in the preamble to the Treaty (Argentina, Australia, Belgium, Chile, French Republic, Japan, New Zealand, Norway, South Africa, Russia - as the successor to the SU -, UK and USA) and those Parties that have become Parties by accession and that demonstrate their interest in Antarctica by conducting substantial scientific research activity there (Art. IX(2)). These include Poland, Germany, China, Uruguay, Italy, Spain and Sweden. See Cottereau (1991), p. 73-74.

\(^{491}\) Art. VII(1). Art. VIII provides that in order to facilitate the exercise of their functions under the Treaty, the observers designated under par. 1 of Art. VII (and certain other personnel) shall be subject only to the jurisdiction of the Contracting Party of which they are nationals in respect of all acts or omissions occurring while they are in Antarctica for the purpose of exercising their functions. Clearly, there is no arrangement for the approval of observers.
by any observers designated in accordance with Art. VII(1). Inspection as a method of verification (fact-finding stage) is also available in the form of aerial observation, which may be carried out at any time over any or all areas of Antarctica by any of the Contracting Parties having the right to designate observers (Art. VII(4)). It can be assumed that the wording ‘aerial observation’ encompasses the use of satellites. The information on, inter alia, expeditions and stations occupied by its nationals that each Contracting Party has to provide in accordance with Art. VII(5), as well as the information collected pursuant to Art. III, can provide the trigger to instigate the rights of inspection provided for. The representatives of the Contracting Parties shall meet at suitable intervals and places for the purpose of formulating, considering and recommending to their Governments measures regarding inter alia facilitation of the exercise of the rights of inspection provided for in Art. VII of the Treaty (Art. IX (1(d)). Reports from the observers referred to in Art. VII shall be transmitted to the representatives of the Contracting Parties participating in the meetings (Art. IX(3)). With such reports, which may contain an assessment regarding compliance with the provisions of the Treaty and, as appropriate, the Recommendations adopted at consultative meetings, made on the basis of the review of the facts found in the inspection procedures in connection with the facts resulting from monitoring, the verification process within the Antarctic Treaty ends. The Antarctic Treaty has no further provisions on verification. It is however clear that the result of the verification (the assessment whether fact-finding and review revealed any violation of the Treaty) can be given proper consideration in the only forum that the Treaty mentions, the meeting of the representatives (Art. IX(1)). Therefore most probably, the report will be considered in the meeting of the representatives and consultations on its contents will take place there. Even if this consideration results in a Recommendation, that Recommendation might not become obligatory to all States, since each of them is able to block it. Furthermore, the silence of the Treaty in this respect makes that the Antarctic Treaty does not exclude the possibility of unilateral assessment.

492 See Art. VII(3). By virtue of these verification activities, observers will be able to ‘ensure the observance’ of the prohibition of any measure of a military nature, such as the establishment of military basis and fortifications, the carrying out of military manoeuvres, as well as the testing of any type of weapon (see Art. I).
494 The inspection reports will be disseminated to the other States Parties to the Treaty. Dissemination of the inspection reports beyond the States Parties is favoured by the US, that distributes the reports to the UNS-G and even national information centres, thereby rendering the verification more international. See Cotterieu (1991), p. 78. But see also De Jonge Oudraat (1992), p. 222-223, who asserts that the verification mechanism of the Antarctic Treaty is of a highly discriminatory character, the very liberal attitude of the US in disseminating inspection results notwithstanding.
Outer Space Treaty. The Outer Space Treaty has the rather futuristic provision that all stations, installations, equipment and space vehicles on the moon and other celestial bodies shall be open to representatives of other States Parties on a basis of reciprocity.\textsuperscript{495} Such representatives shall give reasonable advance notice of a projected visit (Art. XII). This ‘right to conduct a visit’ can be considered the only provision of verification in the Outer Space Treaty. The treaty makes explicit that States Parties to the Treaty bear international responsibility for their activities in outer space (Art. VI). There is international liability for damage inflicted to a State Party by objects launched into space by another State Party; Art. VII contains one of the rare examples in international law of liability \textit{per se}. It has probably been envisaged by the drafters that potential problems regarding compliance could be solved with reference to the law of State responsibility thereby rendering a treaty-based verification mechanism redundant. In recent years, many proposals have been made regarding arms control in outer space in general and regarding the strengthening of the verification mechanism of the Outer Space Treaty in particular, but no amendment of the Treaty has been made so far.

Moon Agreement. The Moon Agreement contains, like the Outer Space Treaty, a provision on international responsibility (Art. 14). On top of that (and unlike the Outer Space Treaty), the Moon Agreement contains a rather extensive verification mechanism (Art. 15). Each State Party may assure itself that the activities of other States Parties in the exploration and use of the moon are compatible with the provisions of the Agreement. To this end, all space vehicles, equipment, facilities, stations and installations on the moon shall be open to other States Parties (Art.15(1)). There is apparently no ‘trigger’ required for States Parties wanting to assure themselves of compliance by another State Party. Such States Parties shall give reasonable advance notice of a projected visit, in order that appropriate consultations may be held and that maximum precautions may be taken to assure safety and to avoid interference with normal operations in the facility to be visited (Art. 15(1)). This fact-finding within the verification process through the method of visits (‘inspection’) will be the primary source from which a State Party may acquire ‘reason to believe that another State Party is not fulfilling the obligations incumbent upon it pursuant to the Agreement or that another State Party is interfering with the rights which the former State has under the Agreement’ (Art. 15(2)).\textsuperscript{496} A State Party that has such ‘reasonable’

\textsuperscript{495} Shuhua (1991), at p. 125-126 points out that the verification mechanism of the Outer-Space Treaty works through the principles of ‘reciprocity’ and ‘equality’: States Parties assume no unilateral obligations towards each other.

\textsuperscript{496} The Moon Agreement has no provisions on monitoring for compliance-control purposes. Although a State Party could obtain from whatever circumstance or event ‘reason’ to believe that non-compliance occurs, it will most likely first assure itself, in accordance with par. 1 of
suspicion may request consultations with the suspected State Party. A State Party receiving such a request shall enter into consultations without delay. Any other State Party which requests to do so shall be entitled to take part in the consultations. Compared to the Outer Space Treaty, this provision is an important improvement. Each State Party participating in such consultations shall seek a mutually acceptable resolution of any controversy and shall bear in mind the rights and interests of all States Parties. The UNS-G shall be informed of the results of the consultations and shall transmit the information received to all States Parties concerned. In pursuance of Art. 15, any State Party may act on its own behalf or with the full or partial assistance of any other State Party or through appropriate international procedures within the framework of the UN in accordance with the Charter (Art. 15(1)). In the rounds of consultations, the facts that gave a State Party reason to suspect another State Party of not complying, will be measured against the norms of the Agreement. The review within the verification process thus takes place in the consultations. An (unofficial) ‘assessment’ may result from the consultations. If the consultations do not lead to a mutually acceptable solution, the Parties concerned shall start dispute settlement procedures (Art. 15(3)).

3.2 Verification provisions in other global arms control treaties

**LTBT.** The LTBT has no verification provisions. In the days of its creation, inspection between the nuclear powers was considered ‘legalised espionage’ and less intrusive methods were not considered necessary. The treaty does not refer to any regular meeting of the Parties whatsoever, let alone a consultation forum, even though the meeting of the ‘Original Parties’ could be regarded as something like that. Parties were expected to use their NTMs also for verification purposes.

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Art. 15, that the activities of other States Parties are compatible with the provisions of the Agreement.

1. Parties will in most cases debate the issue of controversy among themselves. There is no independent body placed above the Parties to make an official assessment. The conclusions of the consultations will instead provide an overview of the conflicting points of view of the Parties concerned as long as they have not reached a mutually acceptable settlement.

2. Cf. Schwelb (1964). The sole reference to a meeting is in Art. II of the Treaty. According to Art. II(1), any Party may propose amendments to the Treaty. If one-third or more of the Parties request the Depository Governments to do so, they shall convene a conference, to which they shall invite all the Parties, to consider such amendment. In 1991, this provision was used in an attempt to amend the LTBT to envelop a prohibition on underground nuclear weapon tests too. This attempt failed because of a veto against the amendment exercised by the NWS (granted to them, as the ‘Original Parties’, by Art. II(2)).

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Sea-Bed Treaty. The Sea-Bed Treaty has a verification mechanism in Art. III. Since the Treaty relates primarily to regions beyond national jurisdiction, the Sea-Bed Treaty might have been expected to contain a stricter and more invasive system than it has.⁵⁰⁰ In order to promote the objectives of and ensure compliance with the provisions of the Treaty, each State Party to the Treaty shall have the right to verify through observation the activities of other States Parties to the Treaty on the sea-bed and the ocean floor and in the subsoil thereof beyond the zone referred to in Art. I of the Treaty, provided that observation does not interfere with such activities. Observation can be considered to constitute the fact-finding method of the verification process in the Sea-Bed Treaty.⁵⁰¹ Art. III(2) provides that if after such observation reasonable doubts remain concerning the fulfilment of the obligations assumed under the Treaty, the State Party having such doubts and the State Party that is responsible for the activities giving rise to the doubts shall consult with a view to removing the doubts. The use of the word ‘remain’ makes clear that some significant event or incident raised doubts and that as a result the observation took place.⁵⁰² The reasons for the doubts can be anything; the Treaty does not set any restrictions as to their possible source.⁵⁰³ Art. III(5) indicates inter alia that verification pursuant to Art. III may be undertaken by any State Party using its own means (of verification).⁵⁰⁴ These NTMs shall in many cases be the primary source from which a State Party acquires its reasonable doubts. If after the first consultations the doubts persist, the State Party having such doubts shall notify the other States Parties, and the Parties concerned shall co-operate on such further procedures for verification as may be agreed, including appropriate inspection of objects, structures, installations or other facilities that reasonably may be expected to be of a kind described in Art. I of the Treaty, i.e. specifically designed for storing, testing or using nuclear weapons or any other types of weapons of mass destruction. The method of on-site inspection is thus available, albeit that apparently the inspection referred to in Art. III(2) can only be carried out with the ad hoc consent of

⁵⁰¹ Presumably, the means available for observation encompass NTMs. See Mahiou (1991), p. 192. Furthermore, one might in this respect even consider the possibility of on-site inspection. See Myjer (1994), p. 156.
⁵⁰² The only limitation that Art. VII(1) places on the right to verify through observation is that the observation must not interfere with the activities of other States Parties on the sea-bed. From the other paragraphs of the article it becomes clear that the observing Party is presumed to have reasonable doubts. The text of par. 1 however does not require the presence of reasonable doubts as a prerequisite for the right to conduct an observation.
⁵⁰³ Consequently there is also no provision on apparent misuse of the verification mechanism. Provisions on apparent misuse can for example be found in the CWC and the CTBT; see infra, Chapter [6].
⁵⁰⁴ Art. III(5) provides in addition that verification may be undertaken by any State Party with the full or partial assistance of any other State Party, or through appropriate international procedures within the framework of the UN and in accordance with its Charter.
the accused State. After completion of the further procedures for verification, an appropriate report shall be circulated to other Parties by the Party that initiated such procedures (Art. III(2)). It is noticeable that the institutional design of these 'further procedures of verification' has been left completely to the Party having reasonable doubts and the Party that is responsible for the activities giving rise to the doubts. It appears from this provision that the verification of compliance in the Sea-Bed Treaty is treated in the first place as a matter between the two Parties primarily concerned. The Parties concerned can agree on the procedures of their choice, with the side-note that the Parties in the region of the activities, including any coastal State, and any other Party so requesting, shall be entitled to participate in the consultation and co-operation (Art. III(2)). If the State responsible for the activities giving rise to the reasonable doubts is not identifiable by observation of the object, structure, installation or other facility, the State Party having such doubts shall notify and make appropriate inquiries of States Parties in the region of the activities and of any other State Party. The State Party that is responsible for the activities shall consult and co-operate with the other Parties as provided in Art. III(2). If the identity of the Party responsible for the activities giving rise to the reasonable doubts cannot be ascertained, then further verification procedures, including inspection, may be undertaken by the inquiring State Party, which shall invite the participation of the Parties in the region of the activities, including any coastal State, and of any other Party desiring to co-operate (Art. III(3)). The conduct of verification is only restricted in a very general manner by Art. III(6). Verification activities pursuant to the Sea-Bed Treaty shall not interfere with activities of other States Parties and shall be conducted with due regard for rights recognised under international law, including the freedom of the High Seas and the rights of coastal States with respect to the exploration and exploitation of their continental shelves. The phase of review in the process of verification takes place in the rounds of consultation to remove the doubts and in the co-operation on further procedures for verification. The assessment as to non-compliance can be expected to be made in the 'appropriate report' after completion of the further procedures for verification (Art. III(2)).

*NPT.* The NPT is linked to one of the most comprehensive verification systems that exist today, viz. the system of safeguards agreements concluded between the individual members of the NPT on the one hand and the IAEA on the other hand. The NPT itself contains the undertaking for each NNWS to accept safeguards as set forth in an agreement to be negotiated

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505 On the IAEA safeguards system, see *infra*, Chapter [6]. Not only the NPT provides a legal basis for the conclusion of a safeguards agreement with the IAEA; also all NWFZ Treaties explicitly refer to the safeguards system in connection with the verification of compliance.
and concluded with the IAEA in accordance with the Statute of the IAEA and the Agency’s safeguards system, for the exclusive purpose of verification of the fulfilment of its obligations assumed under the NPT with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices (Art. III(1)). The methods and institutional design of the verification mechanism of the NPT are completely external to the NPT itself. It should be realised that the IAEA safeguards, aiming to verify the fulfilment of certain obligations assumed under Art. III NPT, is the only established verification system under the NPT, whereas the fulfilment of other obligations assumed under the NPT remains unverified or even unverifiable.506

BWC. For a long time, biological weapons were considered uncontrollable and ineffective as battlefield weapons. This view seems to be reflected in the relatively limited verification provisions of the BWC (as compared to other arms control treaties with a similar scope of substantive law). The BWC contains a general provision on verification in Art. V. The States Parties to the Convention undertake to consult one another and to co-operate in solving any problems which may arise in relation to the objective of, or in the application of the provisions of, the Convention.507 Consultation and co-operation may also be undertaken through appropriate international procedures within the framework of the UN and in accordance with its Charter (Art. V). As was agreed in the First Review Conference of the BWC of 1980 and reaffirmed in the Second one of 1986, these ‘international procedures’ include the right to request a consultative meeting of all Parties at the expert level.508 The Third Review Conference adopted procedures on this formal consultative meeting and authorised it to consider and clarify any problems arising in relation to the objective or the application of the BWC.509 An extraordinary verification provision can be found in Art. VI, where the UNSC assumes the role of verifying body. Usually, the UNSC only comes into the picture after a prior assessment has been made that a Party has violated the Treaty and that corrective action is required. In case of the BWC, there is no special standing body that determines whether or not a State Party has violated the BWC. Any State Party which finds that any other State Party is acting in breach of obligations deriving from the provisions of the Convention may lodge a complaint with the UNSC (Art.

507 There is no qualification whatsoever regarding the nature or origin of the problem. Since the BWC does not contain any real provisions on monitoring it can be expected that NTMs of verification will be the main sources that reveal potential problems between the Parties.
509 See Final Document BWC (1991), p. 5-8. At the Fourth Review Conference, the validity of the procedures was reaffirmed, although it was noted that the procedures had not been invoked. See Final Document BWC (1996), p. 19.
VI(1)). Thus, States Parties are considered to make their own ‘findings’ that another State Party is acting in breach of the Convention. The complaint should include all possible evidence conforming its validity, as well as a request for its consideration by the UNSC. Each State Party undertakes to co-operate in carrying out any investigation which the UNSC may initiate, in accordance with the provisions of the Charter of the UN, on the basis of the complaint received by the Council. The UNSC shall inform the States Parties of the results of the investigation (Art. VI(2)). Hence, it is the UNSC that does most of the fact-finding (through ‘investigation’) and performs the stages of review and assessment in the verification of the BWC. Each State Party undertakes to provide or support assistance, in accordance with the UN Charter, to any Party to the Convention which so requests, if the UNSC decides that such Party has been exposed to danger as a result of violation of the Convention (Art. VII). Also from this provision it becomes clear that the UNSC has the authority to take the final decisions. But it is also clear that under the supervisory mechanism of the BWC verification and correction tend to intermix. The UNSC under the BWC makes the assessment as a result of its own investigation and at the same time it is the only organ that may authorise the taking of enforcement measures in accordance with Chapter VII of the UN Charter. The importance of the right of veto of the five Permanent Members is an additional questionable consequence, of the prominent role of the UNSC. This is a valid observation, even though the procedure of Art. VI is without prejudice to the prerogative of the States Parties to the BWC to consider jointly the cases of alleged non-compliance with the provisions of the BWC and to make appropriate decisions in accordance with the UN Charter and applicable rules of international law.\footnote{See Final Document BWC (1996), p. 21.}

It is this lack of an institutional design and the rather unclear dual function of the UNSC that gave rise to questions during the Review Conferences and that has induced the comprehensive review of the BWC that is currently going on.\footnote{By Special Conference in 1994 an Ad Hoc Group was established to consider the strengthening of the compliance mechanism of the BWC, which has to round off its negotiations on a Protocol to the BWC before the start of the Fifth Review Conference in 2001; see Final Document BWC (1996), p. 27-29.}

Furthermore, the disclosure of the clandestine biological weapons program of Russia, that had been functioning between 1973 and 1992, has affirmed the inherent weaknesses of the current verification mechanism of the BWC.

\textit{ENMOD Convention.} The ENMOD Convention provides in Art. V(1) a verification-provision which is almost identical to the one in the BWC and the Sea-Bed Treaty. The States Parties undertake to consult one another and to co-operate in solving any problem which may arise in relation to the objectives of, or in the application of the provisions of, the Convention.
Consultation and co-operation pursuant to Art. V of the ENMOD Convention may also be undertaken through appropriate international procedures within the framework of the UN and in accordance with its Charter. In contrast to the BWC, the ENMOD Convention for the purposes set forth in Art. V(1) provides that the Depository shall, within one month of the receipt of a request from any other State Party to the Convention, convene a Consultative Committee of Experts (Art. V(2)).

The international procedures in accordance with which consultation and co-operation pursuant to Art. V(1) take place may include the services of appropriate international organisations as well as of a Consultative Committee of Experts convened pursuant to par. 2. Any State Party may appoint an expert to the Committee whose functions and rules of procedure are set out in the Annex, which constitutes an integral part of the ENMOD Convention. Each expert may be assisted at meetings by one or more advisers (Annex, par. 4). The rules on decision-making are simple: the Committee shall decide procedural questions relative to the organisation of its work where possible by consensus, but otherwise by a majority of those present and voting. There shall be no voting on matters of substance (Annex, par. 2). This means that matters of substance will be decided by consensus.

The Consultative Committee of Experts shall undertake to make appropriate findings of fact and provide expert views to any problem raised pursuant to par. 1 of Art. V by the State Party requesting the convening of the Committee (Annex, par. 1). Each expert on the Committee shall have the right, through the Chairman, to request from States, and from international organisations, such information and assistance as the expert considers desirable for the accomplishment of the Committee’s work (Annex, par. 5). From these provisions it is clear that if called upon, the fact-finding and review within the verification process are performed by the

\[512\] During the negotiations on the ENMOD Convention, several delegations objected to the idea that the UNSC would be the only organ involved in the supervisory procedure; it was felt that an intermediate body was needed which could investigate the matter on an expert basis before the UNSC was involved. See Anastassov (1991), p. 272.

\[513\] This Consultative Committee is clearly not an international organisation or an organ of an international organisation. It is not a standing Committee; the Treaty text speaks of ‘a’ Consultative Committee that shall be convened (within one month) upon request. Parties ‘may’ appoint an expert to the Committee. This means the composition of a Consultative Committee may differ from case to case. Par. 3 of the Annex to the Convention provides that the Depository or his representative shall serve as the Chairman of the Committee.

\[514\] Consensus means that all the Parties have to agree without voting. If voting was required then the Treaty would have prescribed decision-making by unanimity. Note however that this Annex leaves open some questions, such as how it should be decided whether a matter is of a institutional or of a substantive nature or what is meant by ‘members present and voting’ (there is no indication that members could loose their right to vote) or how many votes each member has. With regard to this latter question it no doubt is one vote per member, but it still is somewhat careless not to mention this at all in the Annex.
Consultative Committee of Experts.\textsuperscript{515} The Committee also makes some sort of factual ‘assessment’: it shall transmit to the Depository a summary of its findings of fact incorporating all views and information presented to the Committee during its proceedings. The Depository shall distribute the summary to all States Parties (Art. V(2)). Most probable, this is a kind of ‘preliminary assessment’, because the ENMOD Convention contains on top of this institutionalised verification mechanism another verification mechanism which is identical to the one in the BWC. Consequently, it can be upheld that the Consultative Committee of Experts is not entitled to officially assess whether a violation of the Convention has taken place and by whom.\textsuperscript{516} Any State Party which has reason to believe that any other State Party is acting in breach of obligations deriving from the provisions of the Convention may lodge a complaint with the UNSC. Such a complaint should include all relevant information as well as all possible evidence supporting its validity. The UNSC may initiate an investigation on the basis of the complaint and shall inform the States Parties of the results of the investigation. In short, the main difference between the verification mechanism of the BWC on the one hand and the ENMOD Convention on the other, is that the latter offers a supplement to the UNSC complaints-procedure. States Parties ‘may’ use the services of the Consultative Committee of Experts (Art. V(1)); the procedure of verification through the Committee is not obligatory nor is it linked to the right to lodge a complaint with the UNSC. Although the UNSC will not completely disregard the summary of findings of the Committee, the conclusions of the latter (mostly findings of fact) cannot bind the UNSC. The UNSC makes the final assessment regarding compliance (the mixture between verification and correction is again manifest). Like under the BWC, each State Party undertakes to provide or support assistance, in accordance with the provisions of the Charter of the UN, to any State Party which so requests, if the UNSC decides that such Party has been harmed or is likely to be harmed as a result of violation of the Convention (Art. V(5)).

\textit{Inhumane Weapons Convention.} The Inhumane Weapons Convention has no provisions on verification. This is definitely a drawback of the treaty. In statements or declarations made on signature of the Convention, some States clearly pointed out that the Convention fails to provide for verification of any violation of its clauses, ‘thus weakening its binding force’.\textsuperscript{517} It is to be

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\textsuperscript{515} There is emphasis on the ‘findings of fact’ in the Annex to the Convention. However, the fact that the procedure is used in the process of consultation and co-operation in order to solve any problems which may arise (Art. V(1)) and the fact that expert views are provided and information is requested (Art. V(2) and Annex, par. 1 and 5) both indicate that the Committee also reviews the facts it has found.


\textsuperscript{517} See par. 3 of the Statement made by China on signature of the Convention. See also
regretted that the States that participated in the preparation of the texts of both the Convention and its Protocols have been unable to reach agreement on provisions that would ensure respect for the obligations deriving from those texts, but the Review Conferences that can be held pursuant to Art. 8 of the Convention could be used to submit proposals aimed at filling this gap.\footnote{518}

**APM Convention.** Like several other arms control treaties, the APM Convention provides for a procedure for consultation and co-operation to resolve questions relating to compliance with its provisions (See Art. 8). A State Party may submit, through the UNS-G, a Request for Clarification of questions of compliance by another State Party. The State Party that receives the request shall provide, again through the UNS-G, within 28 days all information which would assist in clarifying the matter. If the requesting State Party does not receive such a response within that period, or if it deems the response to be unsatisfactory, it may submit the matter, through the UNS-G, to the ‘Meeting of the States Parties’. Given that the APM Convention only provides that such meetings shall take place ‘regularly’, and at least once a year (see Art. 11), it may be important that an alternative procedure is offered. Thus, the requesting State Party may propose, through the UNS-G, the convening of a Special Meeting of the States Parties to consider the matter.\footnote{519} The meeting of the States Parties, be it a Special Meeting or not, shall first decide by consensus, or, failing this despite all efforts, by a majority of States Parties present and voting, to consider the matter further. If further clarification is required, the (Special) Meeting of the States Parties shall authorise a fact-finding mission and decide on its mandate by a majority of States Parties present and voting. The Mission, consisting of up to nine experts, shall collect additional information on the spot or in other places directly related to the alleged compliance issues under the jurisdiction or control of the requested State Party (Art. 8(8)). Upon request from the (Special) Meeting of the States Parties, the UNS-G shall appoint the members of the fact-finding mission (candidates are provided by States Parties according to the procedure of Art. 8(9)), which, upon at least 72 hours notice, shall arrive in the territory of the requested State Party at the earliest opportunity and remain there for no more than 14 days (Art. 8(11, 15)). The fact-finding mission shall have the right to introduce the necessary equipment into the territory of the requested State Party, speak with all relevant persons, and have access to relevant areas and installations, albeit that the requested State Party shall have the right to

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\footnote{518}{See the Declarations made on signature of the Convention by France, Italy and the USA.}

\footnote{519}{Art. 8(5); see also Art. 11(3). At least one-third of the States Parties must indicate that they favour such Special Meeting before it can be convened by the UNS-G. A quorum for this Special Meeting, however, shall consist of a majority of States Parties.}
protect sensitive equipment, constitutional obligations and the safety of the members of the fact-finding mission (Art. 8(12-14)). The mission shall report the results of its findings, through the UNS-G, to the (Special) Meeting of the States Parties (Art. 8(17)). A review of all relevant information, including the report of the mission, is performed by the (Special) Meeting of the States Parties. Decisions upon this review are taken by consensus, or, failing this, by two-thirds majority of the States Parties present and voting (Art. 8(20)). Like in many other arms control treaties, there is no explicit mentioning of the assessment of compliance. Instead, it is provided that the Meeting of the States Parties may ‘request’ the requested State Party to take measures to address the compliance issues within a specified period of time, and that the requested State Party shall report on all measures taken in response to this request (Art. 8(18)). Rather open-ended, it is furthermore provided that the (Special) Meeting may also suggest to the States Parties concerned ways and means to further clarify or resolve the matter under consideration, including the initiation of appropriate procedures in conformity with international law. Art. 8 carries the noteworthy title of ‘Facilitation and clarification of compliance’; this seems to underline that good faith intentions as to compliance are expected from the States Parties. In the same line, it is provided that if in the course of the fact-finding procedure there arise circumstances where the issue at hand is determined to be due to circumstances beyond the control of the requested State Party, the (Special) Meeting of the States Parties may recommend appropriate measures, including the use of co-operative measures referred to in Art. 6 of the APM Convention (See Art. 8(19)).

3.3 Verification provisions in Nuclear Weapon Free Zone Treaties
The NWFZ Treaties are all characterised by rather elaborate supervisory mechanisms. Given the fact that the NWFZ Treaties mostly contain provisions on methods of verification and far less provisions on dispute settlement and correction/enforcement, the most merit can be derived from dealing with the institutional design of these treaties in connection with the verification phase of the process of international supervision. First the institutional design and next the methods of supervision of the NWFZ Treaties (in chronological order) will separately be dealt with.

3.3.1 The institutional design of the Tlatelolco Treaty
The Tlatelolco Treaty was the first treaty to establish a comprehensive verification mechanism, ‘administered’ by a specialised international organisation having a wide variety of supervisory methods at its disposal. In order to ensure compliance with the obligations of the Treaty, the Contracting Parties establish an international organisation to be known as the Agency for the Prohibition of Nuclear Weapons in Latin America (‘the Agency’ or ‘OPANAL’). Only the Contracting Parties shall be affected by
its decisions (Art. 7(1)). It is clear that the Agency has been set up specifically to induce compliance with the provisions of the Treaty and it is made explicit that the Agency is deemed to have no power outside the Treaty regime. The Contracting Parties agree to extend to the Agency full and prompt co-operation in accordance with the provisions of the Treaty, of any agreement they may conclude with the Agency and of any agreements the Agency may conclude with any other international organisation or body (Art. 7(3)). There are established as principal organs of the Agency a General Conference, a Council and a Secretariat (Art. 8(1)). The General Secretary is the chief administrative officer of the Agency (Art. 11(1)). Such subsidiary organs as are considered necessary by the General Conference may be established within the purview of the Treaty (Art.8(2)).

The General Conference

The General Conference, the supreme organ of the Agency (see Art. 9(1)), shall be composed of all Contracting Parties; it shall hold regular sessions every two years and may also hold special sessions whenever the Treaty so provides, or, in the opinion of the Council, the circumstances so require. Each Member of the Agency shall have one vote. The General Conference has the widest range of powers: it may consider and decide on any matters or questions covered by the Treaty, within the limits thereof, including those referring to powers and functions of any organ provided for in the Treaty (Art. 9(2a)). As a special task, the General Conference is required to establish procedures for the control system to ensure observance of the Treaty in accordance with its provisions. The General Conference has many important 'internal' powers relating to the functioning of the Agency and its organs.520 The General Conference shall elect its officers for each session and may establish such subsidiary organs as it deems necessary for the performance of its functions (Art. 9(4)). The decisions of the General Conference shall be taken by a two-thirds majority of the Members present and voting in the case of matters relating to the control system and measures in the event of violation of the Treaty (as referred to in Art. 20 of the Treaty), the admission of new Members, the election and removal of the General Secretary, adoption of the budget and matters related thereto. Decisions on other matters, as well as procedural questions and also the determination of which questions must be decided by a two-thirds majority,
shall be taken by a simple majority of the Members present and voting (Art. 9(5)).

The Council
The Council shall be composed of five Members of the Agency elected by the General Conference from among the Contracting Parties for a term of four years, due account being taken of equitable geographical distribution (Art. 10(1)). Each Member of the Council shall have one representative (Art. 10(3)). The Council shall be so organised as to be able to function continuously (Art. 10(4)). The Council shall elect its officers for each session and shall adopt its own rules of procedure (Art. 10(7), (9)). It shall submit an annual report on its work to the General Conference as well as such special reports as it deems necessary or which the General Conference requests of it (Art. 10(6)). In addition to the functions conferred upon it by the Treaty and those which may be assigned to it by the General Conference, the Council shall, through the General Secretary, ensure the proper operation of the control system in accordance with the provisions of the Treaty and with the decisions adopted by the General Conference (Art. 9(5)). Thus, the Council has the function of ‘executive organ’ of the Agency, which has to account for its work to the General Conference at least once a year. The decisions of the Council shall be taken by a simple majority of its members present and voting (Art. 10(8)).

The Secretariat
The Secretariat shall consist of a General Secretary and of such staff as the Agency may require (Art. 11(1)). Like the Council, the General Secretary shall ensure the proper operation of the control system in accordance with the provisions of the Treaty and the decisions taken by the General Conference (Art. 11(3)). The Secretariat is an independent organ; its officials are responsible only to the Agency. The Contracting Parties undertake to respect this exclusively international character of the tasks of the officials and shall not seek to influence them in the discharge of their responsibilities (See Art. 11(6), (7)).

3.3.2 Methods of verification in the Tlatololco Treaty
For the purpose of verifying compliance with the obligations entered into by the Contracting Parties in accordance with Art. 1, a control system shall be established which shall be put into effect in accordance with the provisions of Arts. 13-18 of the Treaty (Art. 12(1)). Article 13 introduces the IAEA

521 The provision which questions must be decided by a two-thirds majority appears in treaties of a more recent date as a decision that itself should also be made by a two-third majority.

522 Par. 2 of Art. 12 provides that the control system shall be used in particular for the purpose of verifying (a) that devices, services and facilities intended for peaceful uses of nuclear energy are not used in the testing or manufacture of nuclear weapons; (b) that none of the
safeguards system into the control system of the Tlatelolco Treaty. Each Contracting Party shall negotiate multilateral or bilateral agreements with the IAEA for the application of safeguards to its nuclear activities. Art. 17 of the Treaty makes clear that nothing in the provisions shall prejudice the rights of the Contracting Parties, in conformity with the Treaty, to use nuclear energy for peaceful purposes, in particular for their economic development and progress. Here too, reference is made to the system of the IAEA, which in the first place means to prevent the conversion of peaceful nuclear energy to military applications. In connection with the monitoring provisions of Art. 14, Art. 15(1) provides that at the request of any of the Contracting Parties, the General Secretary may request any of the Contracting Parties to provide the Agency with complementary or supplementary information regarding any event or circumstance connected with compliance with the Treaty, explaining his reasons. The Contracting Parties undertake to co-operate promptly and fully with the General Secretary.523 This ‘clarification-like’ method of fact-finding within the verification process links up very well with the general fact-finding resulting from the monitoring provisions of the Treaty.

The most important method of verification can be found in Art. 16, viz. special inspections. Here, a particular replacement has been introduced by the 1992 amendment of the Tlatelolco Treaty.524 Whereas the ‘old’ text of the treaty foresaw in a treaty-specific and clearly circumscribed inspection-procedure, the new text relies entirely on the IAEA, with OPANAL playing only a minor role. The ‘new’ Art. 16(1) provides that the IAEA has the power of carrying out special inspections in accordance with Art. 12 and with the agreements referred to in Art. 13 of the Tlatelolco Treaty.525 The activities prohibited in Art. 1 of this Treaty are carried out in the territory of the Contracting Parties with nuclear materials or weapons introduces from abroad, and (c) that explosions for peaceful purposes are compatible with Art. 18 of the treaty.

523 The ‘hierarchy’ between the organs of the organisational framework of the Tlatelolco Treaty again appears from this provision. The General Secretary may do his request only with the authorisation of the Council (Art. 15(1)) and shall inform the Council and the Contracting Parties forthwith of such requests and the respective replies (Art. 15(2)). It is remarkable, that the 1992 amendment of Art. 15 (1) introduced the line ‘at the request of any of the Contracting Parties’, thereby expressly excluding a possible right of initiative of the General Secretary. There must be certain reasons why the General Secretary would ask for additional information (the General Secretary even has to explain these reasons).

524 See Res. 290 (VII) of the General Conference of OPANAL, in CD/1196, 8 April 1993, p. 3 (‘replacement of the existing Article 16 in effect’).

525 In the old text, the Council of OPANAL clearly had inspection powers of its own: “The IAEA and the Council established by the Treaty have the power of carrying out special inspections in the following cases: (a) In the case of the IAEA, in accordance with the agreements referred to in Art. 13 of the Treaty; (b) In the case of the Council: (i) when so requested, the reasons for the request being stated, by any Party which suspects that some activity prohibited by this treaty has been carried out or is about to be carried out, either in the territory of any other Party or in any other place on such latter Party’s behalf, the Council shall immediately arrange for such an inspection in accordance with Art. 10, par. 5; (ii) when
repeated reference in the old text of Art. 16 to ‘suspicion of’ or ‘being charged with’ a violation of the Treaty indicates that the special inspections were originally set up as challenge not routine inspections. This was underlined by the fact that in the old text, the Contracting Parties undertook to grant the inspectors carrying out such special inspections full and free access to all places and all information which might be necessary for the performance of their duties and which were directly and intimately connected with the suspicion of violation of the Treaty (old Art. 16(4)). This wording indicated the almost unrestrained freedom of action that the inspectors were granted in the territory of the Contracting Party wherein the inspection was carried out. It should however be mentioned that no challenge has ever been submitted leading to special inspections. The ‘trigger’ mechanism in the new Art. 16(2) shows not even a sign of a ‘challenge’ character. It provides that at the request of any of the Contracting Parties and in accordance with the procedures established in Art. 15 of the treaty, the Council may submit for the consideration of the IAEA a request that the necessary mechanisms be put into operation to carry out a special inspection. Thus, the Council has lost its power of inspection and is left with a mere right of requesting a special inspection, to be carried out by the IAEA. The General Secretary shall request the Director General of the IAEA to transmit to him the information forwarded to the Board of Governors of the IAEA relating to the conclusion of the special inspection. The General Secretary shall make this information promptly available to the Council, who, in its turn, shall transmit this information to all the Contracting Parties (new Art. 16(3) and (4)). Before the 1992 amendment, OPANAL had itself the power to conclude the special inspection by way of a report. There was even provision for review of the report and an assessment to be made by the General Conference convened in special session. Notwithstanding this legal capacity, it should be noted that in

requested by any Party which has been suspected of or charged with having violated this Treaty, the Council shall immediately arrange for the special inspection requested in accordance with Art. 10, par. 5”. The explicit reference to Art. 10(5) means that the Council (and the General Secretary as well - Art. 11(3)) must act in accordance with the decisions adopted by the General Conference.


527 It was clear from par. 2, 5, 6, and 7 of old Art. 16 that the special inspection would be finished with the drawing-up of a report. A copy of any report (this means, any report resulting from a special inspection conducted by the IAEA as well as any report resulting from a special inspection carried out by the Council of the Agency) was to be transmitted to all the Parties by the Council through the General Secretary (old Art. 16(5)). Similarly, the Council was to send through the General Secretary to the UNS-G and to the Council of the OAS a copy of any report resulting from any special inspection carried out in accordance with par. 1(b) (i) and (ii) of Art. 16 (old Art. 16(6)). The UNS-G would receive the copy of the report ‘for transmission to the UNSC and the UNGA’, the Council of the OAS would receive the copy of the report ‘for its information’ (old Art. 16(6)).

528 The review phase of the verification process would be reached in old Art. 16(7). Par. 7
practice, OPANAL has always lacked the technical capability to review and assess information. For this reason, and for reasons of managing confidentiality of the information received, the increased role of the IAEA should be welcomed (contrary to OPANAL, the IAEA has implemented a confidentiality system). With the amended treaty, it can of course be argued that the stages of review and assessment of the verification process already take place by the carrying out of, and the report resulting from, the IAEA-inspection. However, the institutional structure of the Tlatelolco Treaty brings along that the General Conference, as the supreme organ of the Agency, shall be the organ competent to make any final assessment regarding issues of compliance in the process of verification. This final assessment can be based on the inspection report, that is transmitted to all the Contracting Parties (new Art. 16(4)) and that is therefore known to them, or it may be based on other sources not described in particular (e.g., the information received through the monitoring provisions of Art. 14). ‘New’ Art. 21(1) provides that the General Conference shall take note of all cases in which, in its opinion, any Contracting Party is not complying fully with its obligations under the Treaty. 529 This means the General Conference can still be considered the assessing body of the Treaty, conceiving its opinion with the help of the outcome of the special inspections carried out by the IAEA.

3.3.3 The institutional design of the Rarotonga Treaty
Contrary to the other NWFZ Treaties, the Rarotonga Treaty does not establish a standing organisation for the purpose of compliance-control. Since most Parties to the Treaty do not have the technological capability to build nuclear weapons and are least developed countries, it was important to limit the cost of the Treaty's verification system by keeping it simple. 530 There is established a Consultative Committee which shall from time to time be convened by the Director (of the South Pacific Bureau for Economic Cooperation, see Art. 9(1)). Institutional provisions on the Consultative Committee, which can be found in Annex 3 to the Treaty, learn that it shall be constituted of representatives of the Parties, each Party being entitled to

provided that the Council may decide, or any Contracting Party may request, the convening of a special session of the General Conference for the purpose of considering the reports resulting from any special inspection. In such a case, the General Secretary was to take immediate steps to convene the special session requested. The General Conference, convened in this special session, might make recommendations to the Contracting Parties and submit reports to the UNS-G to be transmitted to the UNSC and the UNGA (old Art. 16(8)). It can be fairly questioned whether these 'recommendations' were meant to be legally binding on the Parties, given that usually 'recommendations', contrary to 'decisions', refer to non-binding pronouncements.

529 Due to a renumbering after the 1992 amendment, all articles as of old Art. 20, become new articles 21, etc.
appoint one representative who may be accompanied by advisers, and that a quorum shall be constituted by representatives of half the Parties. Decisions of the Consultative Committee shall be taken by consensus or, failing consensus, by a two-thirds majority of those present and voting. The Consultative Committee shall adopt such other rules of procedure as it sees fit. There is a close financial and organisational relationship between this Consultative Committee and the South Pacific Forum, which is the regional organisation comprising the independent and self-governing States in the south-west Pacific region. 531

3.3.4 Methods of verification in the Rarotonga Treaty
The Rarotonga Treaty contains a control system for the general purpose of verifying compliance with the obligations deriving from the Treaty (Art. 8). This control system comprises reports and exchange of information (the monitoring provisions) as provided for in Art. 9, the consultations as provided for in Art. 10 and Annex 4(1), the application to peaceful nuclear activities of safeguards by the IAEA as provided for in Annex 2, and a complaints procedure as provided for in Annex 4 (see Art. 8). Without prejudice to the conduct of consultations among Parties by other means, consultations among the Parties can take place in accordance with an institutionalised procedure described in Art. 10 in connection with Annex 3 of the Treaty. The Director, at the request of any Party, shall convene a meeting of the Consultative Committee established by Annex 3 for consultation and co-operation on any matter arising in relation to the treaty or for reviewing its operation (Art. 10). Annex 2 on IAEA Safeguards provides in par. 1 that the safeguards shall in respect of each Party be applied by the IAEA as set forth in an agreement negotiated and concluded with the IAEA on all source or special fissionable material in all peaceful nuclear activities within the territory of the Party, under its jurisdiction or carried out under its control anywhere. 532 With the exception of the island Vanuatu, all Members of the South Pacific Forum were already Parties to

531 See e.g., Annex 3: the Consultative Committee shall be chaired at any given meeting by the representative of the Party which last hosted the meeting of heads of Government of Members of the South Pacific Forum. The costs of the Consultative Committee, including the costs of special inspections pursuant to Annex 4, shall be borne by the South Pacific Bureau for Economic Co-operation. See also the role of the Director of this Bureau in the circulation of reports and exchange of information (Art. 9(1)). The Treaty shall be open for signature by any member of the South Pacific Forum (Art. 12(1)). Also the final paragraph of the preamble to the Treaty relates to the South Pacific Forum: “Guided by the decision of the Fifteenth South Pacific Forum at Tuvalu that a nuclear free zone should be established in the region at the earliest possible opportunity in accordance with the principles set out in the communiqué of that meeting (…)”.

532 The agreement shall be, or shall be equivalent in its scope and effect to, an agreement required in connection with the NPT on the basis of the material reproduced in document INFCIRC/153 (corr.) of the IAEA (Annex 2(2)).
the NPT and hence subject to the normal verification process of the IAEA when the Rarotonga Treaty was concluded.\(^{533}\) For the purpose of the Treaty, the safeguards referred to in par. 1 shall have as their purpose the verification of the non-diversion of nuclear material from peaceful nuclear activities to nuclear explosive devices (Annex 2(3)). When the IAEA carries out an inspection in the territory of a Party, this Party agrees to transmit, upon request of any other Party, to that latter Party and to the Director for the information of all Parties, a copy of the overall conclusions of the most recent report by the IAEA on its inspection activities in the territory of the Party concerned. Each Party to the treaty also agrees to advise the Director promptly of any subsequent findings of the Board of Governors of the IAEA in relation to those conclusions for the information of all Parties (Annex 2(4)). The Director shall report annually to the South Pacific Forum inter alia on matters arising under this paragraph of Annex 2 (see Art. 9(3)).

An important treaty-specific method of verification is in the complaints procedure. A Party which considers that there are grounds for a complaint that another Party is in breach of its obligations under the Treaty shall, before bringing such a complaint to the Director, bring the subject matter of the complaint to the attention of the Party complained of and shall allow the latter reasonable opportunity to provide it with an explanation and to resolve the matter (Annex 4(1)). It is remarkable, that the aforementioned Art. 8(2(b)) of the Treaty refers to ‘consultations as provided for in (...) Annex 4(1)’ as part of the control system of the Treaty. Paragraph 1 of Annex 4 (the ‘Complaints Procedure’), does not mention the word ‘consultations’, but it can be assumed that this may be what involves ‘bringing the complaint to the attention of the Party complained of’ and allowing it reasonable opportunity to provide an explanation. If the matter is not so resolved, the complainant Party may bring the complaint to the Director with the request that the Consultative Committee be convened to consider it. Complaints shall be supported by an account of evidence of breach of obligations known to the complainant Party. Upon receipt of a complaint the Director shall convene the Consultative Committee as quickly as possible to consider it (Annex 4(2)). Like in other Treaties, the Parties are requested to try first to resolve the matter among themselves. Only when they fail and only when there is an account of evidence (and not a mere suspicion) of breach of obligations, the institutional framework of the Treaty will be called on.\(^{534}\) The Consultative Committee, taking account of efforts made under par. 1, shall afford the Party complained of a reasonable opportunity to provide it with an explanation of the matter (Annex 4(3)). Although these provisions bear some characteristics of a dispute settlement procedure, their purpose is


\(^{534}\) See again Annex 4(1): ‘A Party (...) shall, before bringing such a complaint to the Director, bring the subject matter of the complaint to the attention of the Party complained of (...)’ (italics added).
in the first place to determine whether a violation of the Treaty occurred. This can be tried as well through the method of special inspections. If, after considering any explanation given to it by the representatives of the Party complained of, the Consultative Committee decides that there is sufficient substance in the complaint to warrant a special inspection in the territory of that Party or elsewhere, the Consultative Committee shall direct that such special inspection be made as quickly as possible (Annex 4(4)). It is not entirely clear from these wordings whether a State has a right to refuse an inspector, nor has a time-limit been specified. A special inspection of this type, which clearly bears the character of a challenge inspection, is one of the most intrusive fact-finding methods available. That is why it will only be performed after the Parties failed to resolve the matter with the aid of other methods (consultations among themselves and their explanations given to the Consultative Committee). The special inspection will be performed by a special inspection team of three suitable qualified special inspectors appointed by the Consultative Committee in consultation with the complained of and complainant Parties, provided that no national of either Party shall serve on the special inspection team. Similar to the Tlatelolco Treaty, the Rarotonga Treaty guarantees almost complete freedom of action to the special inspection team. Each Party shall give special inspectors full and free access to all information and places within it territory which may be relevant to enable the special inspectors to implement the directives given to them by the Consultative Committee (Annex 4(6)). These directives concern tasks, objectives, confidentiality and procedures as may be decided upon by the Consultative Committee. The Party complained of shall take all appropriate steps to facilitate the special inspection, and shall grant to special inspectors privileges and immunities necessary for the performance of their functions (Annex 4(7)). As is common, the special inspection is concluded with a report. It is however noticeable, that the Rarotonga Treaty goes in to the (minimum) contents of the report and that it explicitly refers to the assessment that has to be made by the Consultative Committee. The special inspectors shall report in writing as quickly as possible to the Consultative Committee, outlining their activities, setting out relevant facts

535 Australia on its own accord has introduced in its national legislation an additional requirement: a Rarotonga Treaty inspector must be accompanied by an Australian inspector with a warrant from a magistrate authorising entry in the object to be inspected. However, this restriction in national law could not be invoked to circumvent the clear provision in the Treaty of Rarotonga. See Findlay (1991), p. 296-297.

536 See Annex 4(5). In making a special inspection, special inspectors shall be subject to the direction only of the Consultative Committee and shall comply with such directives. Directives shall take account of the legitimate interests of the Party complained of in complying with its other international obligations and commitments and shall not duplicate safeguards procedures to be undertaken by the IAEA pursuant to agreements referred to in Annex 2(1). The special inspectors shall discharge their duties with due respect for the laws of the Party complained of.
and information as ascertained by them, with supporting evidence and
documentation as appropriate, and stating their conclusions. The
Consultative Committee shall report fully to all Members of the South
Pacific Forum, giving its decisions as to whether the Party complained of is
in breach of its obligations under the Treaty (Annex 4(8)). As such, the
moment of making the assessment within the verification process has been
spelled out in the Rarotonga Treaty.

3.3.5 The institutional design of the Pelindaba Treaty
The Parties to the Pelindaba Treaty agree to establish the African
Commission of Nuclear Energy ('the Commission') for the purpose of
ensuring compliance with their undertakings under the treaty (Art. 12(1)).
The Commission will be located in South Africa and is also known by its
acronym AFCONE.\footnote{See Ogunbanwo (1996), p. 181 and 184.}
The Commission shall meet in ordinary session once a year, and may meet in extraordinary session as may be required by the
complaints and settlement of disputes procedure in Annex IV (Art. 12(3)).
Conferences of the State Parties to the Treaty can also be convened but not
for the purpose of ensuring compliance (see Art. 14). A Conference of All
Parties to the Treaty shall be convened by the Depositary as soon as possible
after the entry into force of the Treaty to, \textit{inter alia}, elect members of the
Commission and determine its headquarters. The Conference of all Parties
shall also adopt the Commission's budget and a scale of assessment to be
paid by the State Parties (Art. 14(2)). Further Conferences of State Parties
shall be held as necessary and at least every two years, and will be convened
by the Commission (Art. 12(2b)). In Annex III to the Treaty, the internal
institutional provisions on AFCONE can be found. The Commission shall
be composed of twelve Members elected by the Parties to the Treaty for a
three-year period. Each Member shall have one representative (Annex
III(1)). For the first meeting of the Commission, a quorum shall be
constituted by representatives of two thirds of its Members. For that meeting
decisions of the Commission shall be taken as far as possible by consensus
or otherwise by a two-thirds majority of its Members.\footnote{This means that if precisely the 2/3 quorum is present, decisions will have to be taken by consensus or \textit{de facto} by unanimity of votes. The text of Annex III refers to two thirds of the 'Members' of the Commission, not two thirds of the 'Members present and voting'.}
The Commission shall adopt its rules of procedure at that meeting. These rules of procedure
probably shall contain the decision-making procedures that will be used by
the Commission after its first meeting referred to in Annex III. The
Commission shall have a Bureau consisting of the Chairman, the Vice-
Chairman and the Executive Secretary. The Commission shall elect the
Chairman and the Vice-chairman, whereas the Executive Secretary of the
Commission shall be designated by the Secretary-General of the OAU at the
request of the Parties to the Treaty and in consultation with the Chairman.
(Annex III(2)). Apparently the Executive Secretary is an officer of the Commission, not of the Bureau. It seems that the ‘Bureau’ is just a denomination for organisational purposes without separate legal standing. There is no further provision on the functions of the members of the Bureau, but it can be presumed that the three officers of the Bureau constitute the ‘executive and administrative board’ of the Commission, itself the executive body of the Treaty.

3.3.6 Methods of verification in the Pelindaba Treaty

Annex II to the Pelindaba Treaty deals with the application of the safeguards system of the IAEA. For the purpose of the Treaty, the safeguards shall have as their purpose the verification of the non-diversion of nuclear material from peaceful nuclear activities to nuclear explosive devices or for purposes unknown (Annex II(3)). A Party that has already entered into a safeguards agreement with the IAEA is deemed to have already complied with the requirement of entering into an agreement with the IAEA ‘on all source or special fissionable material in all nuclear activities within the territory of the Party under its jurisdiction or carried out under its control anywhere’ (see Annex II(1) and (2)). Each Party shall include in its annual report to AFCONE for its information and review, a copy of the overall conclusions of the most recent report by the IAEA on its inspection activities in the territory of the Party concerned, and advise the Commission promptly of any change in those conclusions (Annex II(4)).

One of the responsibilities of AFCONE is to bring into effect the complaints procedure elaborated in Annex IV to the Treaty (see Art. 12(2d)). This Complaints Procedure starts with efforts by the Parties to resolve the matter inter se. A Party which considers that there are grounds for a complaint that another Party is in breach of its obligations under the Treaty shall bring the subject matter of the complaint to the attention of the Party complained of and shall allow the latter thirty days to provide it with an explanation and to resolve the matter. This may include technical visits agreed upon between the Parties (Annex IV(1)). The fixed time of thirty days as well as the

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539 The safeguards Agreement for the verification of Peaceful Uses (see Art. 9 of the Pelindaba Treaty) shall in respect of each Party be applied by the IAEA. The Agreement shall be, or shall be equivalent in its scope and effect to, the agreement required in connection with the NPT (INFCIRC/153 corr.). Each Party shall take all appropriate steps to ensure that the Agreement is in force for it not later than eighteen months (cf. the other NWFZ Treaties) after the date of entry into force for that Party of the Treaty. See Annex II, par. 1 and 2.

540 This will be done in conformity with Art. 13 of the Pelindaba Treaty. The information furnished by a Party shall not be, totally or partially, disclosed or transmitted to third Parties, by the addressees of the reports, except when that Party gives its express consent. See Annex II(4).

541 This whole procedure applies to Parties to Protocol III of the Treaty as well. This Protocol applies to the Colonial Powers in the African territory. Each Protocol Party undertakes to apply, in respect of the territories to which it is de jure or de facto internationally responsible
explicit reference to the possible conduct of technical visits are a novelty as compared to the other NWFZ Treaties. If the matter is not so resolved, the complainant Party may bring this complaint to the Commission (Annex IV(2)). The Commission, taking account of efforts made between the Parties themselves, shall afford the Party complained of forty-five days to provide it with an explanation of the matter (See Annex IV(3)). Again, the fixed time period is noticeable. If, after considering any explanation given to it by the representatives of the Party complained of, the Commission considers that there is sufficient substance in the complaint to warrant an inspection in the territory of a Party to Protocol III, the Commission may request the IAEA to conduct such inspection as soon as possible. The request shall indicate the tasks and objectives of such inspection, as well as any confidentiality requirements (Annex IV(4a)). The Commission may also designate its representatives to accompany the Agency’s inspection team (Annex IV(4)). Hence, contrary to the Tlatelolco and the Rarotonga Treaty, the Pelindaba Treaty starts from the idea that the IAEA will carry out the challenge inspections under the Treaty at the request of AFCONE. The Commission may however also establish its own inspection mechanisms (see Annex IV(5)). The costs involved in the inspection procedure shall be borne by the Commission. In the case of abuse, the Commission shall decide whether the requesting State Party should bear any of the financial implications (Annex IV(4h)). The freedom of action granted to the inspectors is comparable to their freedom of action under the other NWFZ Treaties. Each Party shall give the inspection team full and free access to all information and places within each territory that may be deemed relevant by the inspectors to the implementation of the inspection. The Party complained of shall take all appropriate steps to facilitate the work of the inspection team, and shall accord them the same privileges and immunities as those set forth in the relevant provisions of the Agreement on the Privileges and Immunities of the IAEA (Annex IV(4c) and (4d)). The IAEA shall report its findings in writing as quickly as possible to the Commission, outlining its activities, setting out relevant facts and information as ascertained by it, with supporting evidence and documentation as appropriate, and stating its

situated within the African NWFZ, the provisions containing the most important undertakings (the most important substantive obligations; Arts. 3 to 10) of the Treaty and to ensure the application of safeguards specified in Annex II of the Treaty. See Art. 1 of Protocol III.

542 The reference to Protocol III serves to include those African territories for which Colonial Powers are de jure or de facto internationally responsible within the range of territories in which inspections can take place.

543 In this respect, it is not entirely clear whether the ‘confidentiality requirements’ referred to in Annex IV(4a) could bar at some point the ‘full and free access’ of the inspectors to ‘all information and all places they deem relevant’. Most probably however, ‘confidentiality’ in this context refers to confidentiality of information gathered during the carrying out of the inspection.
conclusions. It is the Commission that makes the final assessment thus concluding the verification process. The Commission shall report fully to all States Parties to the Treaty giving its decision as to whether the Party complained of is in breach of its obligations under the Treaty (Annex IV(4(e)). There is a follow-up after this assessment in that if the Commission considers that the Party complained of is in breach of its obligations under the Treaty, or that the provisions of Annex IV have not been complied with, States Parties shall meet in extraordinary session to discuss the matter (see Annex IV(4f)). These discussions cannot be considered part of the verification process since they take place after the final assessment of the verification process has been made, but they can be considered part of some sort of dispute settlement procedure.

3.3.7 The institutional design of the Southeast Asia Nuclear Weapon Free Zone Treaty

The Commission

There is established a Commission for the Southeast Asia Nuclear Weapon-Free Zone (‘the Commission’; Art. 8). The function of the Commission shall be to oversee the implementation of the Treaty and to ensure compliance with its provisions (Art. 8(3)). All States Parties are ipso facto members of the Commission. The Commission shall meet as and when necessary in accordance with the provisions of the Treaty including upon the request of any State Party. It is not a standing body. As far as possible, the Commission shall meet in conjunction with the ASEAN Ministerial Meeting (Art. 8(4)). Like in all other NWFZ Treaties, the connection between the regional organisation and the Treaty organisation is made explicit. Unless otherwise provided for in the Treaty, two-thirds of the members of the Commission shall be present to constitute a quorum (Art. 8(7)). Each member of the Commission shall have one vote (Art. 8(7)). Decisions shall,

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544 The strict time limits that characterise the procedure under the Pelindaba Treaty could not be imposed on the IAEA inspection team, which only has to deliver its report ‘as quickly as possible’.
545 It can of course be asked to what extent the report of the IAEA, being an independent organisation coming from outside the Treaty, would leave room for the Commission to give a truly substantive decision of its own.
546 Remarkably, the ‘plenary organ’ of the Treaty that is usually in other treaties referred to as the ‘Conference of States Parties’, is called here ‘Commission’. It is also remarkable, that the Treaty prescribes that each State Party shall be represented in the Commission by its Foreign Minister or his representative accompanied by alternates and advisers (Art. 8(2)). This is necessary because the Treaty establishes another body consisting of representatives of all Parties, albeit on a lower level (see Art. 9). This provision is probably also meant to be sure of the involvement of representatives of a high diplomatic level.
547 At the beginning of each meeting, the Commission shall elect its Chairman and such other officers as may be required. They shall hold office until the next elections at the next meeting take place (see Art. 8(5)).
as a rule, be taken by consensus or, failing consensus, by a two-thirds majority of the members present and voting (see Art. 8(8)). The Commission shall, by consensus, agree upon and adopt rules of procedure for itself as well as financial rules governing its funding and that of its subsidiary organs (Art. 8(9)).

The Executive Committee
There is established, as a subsidiary organ of the Commission, the Executive Committee (Art. 9(1)). The Executive Committee shall be composed of all States Parties to the Treaty. This is a remarkable provision, because usually the word 'Executive' would point at a body with a limited number of members. Apparently, under the Southeast Asia NWFZ Treaty each State Party is represented in two 'plenary bodies' with different representatives, one on a ministerial level (the Commission) and one on a lower level (the Executive Committee). The Executive Committee shall meet as and when necessary for the efficient exercise of its functions. As far as possible, the Executive Committee shall meet in conjunction with the ASEAN Senior of Officials meeting (Art. 9(4)). In line with the foregoing, the Executive Committee is not a standing body, but like a 'plenary body', it holds sessions on a regular basis. The rules on the quorum, votes and decision-making are the same as those of the Commission (see Art. 9(6-8)). The functions of the Executive Committee are almost exclusively in the field of compliance-control (Art. 9(3)).

3.3.8 Methods of verification in the Southeast Asia Nuclear Weapon Free Zone Treaty
Art. 10 of the Southeast Asia NWFZ Treaty establishes a control system for the purpose of verifying compliance with the obligations of the States Parties under the Treaty. This Control System shall comprise the IAEA safeguards system; reports and exchange of information (see the monitoring provisions of Art. 11); requests for clarification as provided for in Art. 12; and requests and procedures for a fact-finding mission as provided for in Art. 13. Each State Party shall have the right to request another State Party for clarification concerning any situation which may be considered ambiguous or which may give rise to doubts about the

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548 Each State Party shall be represented in the Executive Committee by one senior official as its representative, who may be accompanied by alternates and advisers (Art. 9(2)). Compare this provision to Art. 8(2). A clear connection between the two bodies follows from the fact that the Chairman of the Executive Committee shall be the representative of the Chairman of the Commission (Art. 9(5)).

549 Each State Party which has not done so shall conclude an agreement with the IAEA for the application of full scope safeguards to its peaceful nuclear activities not later than eighteen months (cf. the other NWFZ Treaties) after the entry into force for that State Party of the Southeast Asia NWFZ Treaty. See Art. 5 of the Treaty.

196
compliance of that State Party with the Treaty. It shall inform the Executive Committee of such a request. The requested State Party shall duly respond by providing without delay the necessary information and inform the Executive Committee of its reply to the requesting State Party (Art. 12(1)). This is in essence an inter-State verification process; the Treaty organ is merely informed and not actively involved in the procedure. Pursuant to Art. 12(2), each State Party has the right to request the Executive Committee to seek clarification from another State Party concerning any situation which may be considered ambiguous or which may give rise to doubts about compliance of that State Party with the Treaty. Upon receipt of such a request, the Executive Committee shall consult with the State Party from which clarification is sought for the purpose of obtaining the clarification requested. This is the Treaty’s (modestly) institutionalised variant of the request for clarification. The very broadly formulated ‘trigger’ (“any situation which may be considered ambiguous or which may give rise to doubts about compliance”) is the same in both paragraphs of Art. 12.

Like in the other NWFZ Treaties, the Southeast Asia NWFZ Treaty enables the States Parties to request a fact-finding mission. A State Party shall have the right to request the Executive Committee to send a fact-finding mission to another State Party in order to clarify and resolve a situation which may be considered ambiguous or which may give rise to doubts about compliance with the provisions of the Treaty, in accordance with the procedure contained in the Annex to the Treaty (Art. 13). This provision is not coupled with Art. 12, so it must be deemed possible to request a fact-finding mission without having made prior requests for clarification pursuant to Art. 12. The Annex to the Treaty contains the procedure for a fact-finding mission. The State Party requesting a fact-finding mission (the ‘requesting State’) shall submit the request to the Executive Committee specifying the doubts or concerns and the reasons for it, the location in which the situation which gives rise to doubts has allegedly occurred, the relevant provisions of the Treaty about which doubts or concerns have arisen, and any other relevant information (See Annex(1)). Upon receipt of a request for a fact-finding mission, the Executive Committee shall immediately inform the State Party that the fact-finding mission is requested to be sent to (the ‘receiving State’) about the receipt of the request (Annex(2a)), and, in the event that the Executive Committee decides that the request complies with the provisions of Annex(1) and that it is not frivolous, abusive or clearly beyond the scope of the Treaty, it shall immediately forward the request for a fact-finding mission to the receiving State, indicating, inter alia, the proposed data for sending the mission which shall not be later than three weeks from the time the receiving State received the request for a fact-finding mission. The Executive Committee shall also

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550 The Executive Committee shall not later than three weeks after receiving the request,
immediately set up a fact-finding mission consisting of three inspectors from the IAEA who are neither nationals of the requesting nor receiving State (Annex(4)). The inspectors are ‘lend’ from the IAEA; there are no inspectors of the bodies of the Southeast Asia NWFZ Treaty itself. The receiving State shall comply with the request for a fact-finding mission. It shall co-operate with the Executive Committee in order to facilitate the effective functioning of the fact-finding mission, *inter alia*, by promptly providing unimpeded access of the fact-finding mission to the location in question. The receiving State shall accord to the members of the fact-finding mission such privileges and immunities as are necessary for them to exercise their functions effectively (Annex(5)). The freedom of action of the inspectors is not formulated in the exact same manner as in the other NWFZ Treaties, and it is explicitly stated that the Receiving State shall have the right to take measures to protect sensitive installations and to prevent disclosures of confidential information and data not related to the Treaty. A fact-finding mission is considered not only to clarify but also to resolve an ambiguous situation. The fact-finding mission shall submit preliminary or interim reports to the Executive Committee and shall complete its task without undue delay and shall submit its final report to the Executive Committee within a reasonable time upon completion of its work (Annex (7c/d)). The Executive Committee shall consider the reports submitted by the fact-finding mission and reach a decision on whether or not there is a breach of the Treaty (Annex (8a)). As such, this Treaty organ performs the review of the specific information gathered by the fact-finding mission and makes the final assessment which concludes the verification process. The Executive Committee shall immediately communicate its decision to the requesting State and the receiving State and shall present a full report on its decision to the Commission (Annex (8b/c)).

The Southeast Asia NWFZ Treaty has an interesting final provision to the Annex on fact-finding missions, which provides that in the event that the receiving State refuses to comply with the request for a fact-finding mission decide if the request complies with these provisions of Annex(1) and whether it is not frivolous, abusive or clearly beyond the scope of the Treaty. When the Executive Committee decides that such is not the case, it shall take no further action on the request and inform the requesting State and the receiving State accordingly (Annex(3)). Neither the requesting nor the receiving State Party shall participate in those decisions, see Annex(2b).

551 See Annex(6). The freedom of action of the inspectors is referred to in the Southeast Asia NWFZ-Treaty as ‘unimpeded access’, whereas other Treaties use wordings like “full and free access to all information and places that may be deemed relevant by the inspectors”. It is also explicitly stated that the fact-finding mission, in the discharge of its functions, shall respect the laws and regulations of the receiving State and refrain from activities inconsistent with the objectives and purposes of the Treaty (Annex(7a/b)).

552 See for these functions of the Executive Committee also Art. 9(b, c, d) of the Treaty, which provide that this organ shall consider and decide on requests for clarification and for a fact-finding mission; set up a fact-finding mission in accordance with the Annex of the Treaty; and consider and decide on the findings of a fact-finding mission and report to the Commission.
(in accordance with Annex(4)), the requesting State through the Executive Committee shall have the right to request a meeting of the Commission. The Executive Committee shall then immediately request the Commission to convene a meeting (Annex(9)). By this, the Southeast Asia NWFZ Treaty is the only NWFZ Treaty that also enters into the question of what may be done in case a State Party refuses to comply with some of the provisions of the compliance mechanism itself (instead of the question of alleged non-compliance with the substantive law of the Treaty).

3.4 Verification provisions in the CFE Treaty

3.4.1 The institutional design of the CFE Treaty

In Art. XVI of the CFE Treaty the States Parties establish a Joint Consultative Group (JCG) in order to promote the objectives and implementation of the provisions of the Treaty (Art. XVI(1)). Within the framework of the JCG the States Parties address questions and consider matters regarding many different subjects. Each State Party shall have the right to raise before the JCG, and have placed on its agenda, any issue relating to the Treaty (Art. XVI(3)). The JCG shall take decisions or make recommendations by consensus. The JCG is not meant to be the only forum the States Parties can make use of, since it is provided that nothing in Art. XVI shall be deemed to prohibit or restrict any State Party from requesting information from or undertaking consultations with other States Parties on matters relating to the Treaty and its implementation in channels or fora other than the JCG (Art. XVI(6)). The JCG shall follow the procedures set forth in the ‘Protocol on the Joint Consultative Group’ (Art. XVI(7)). The JCG shall be composed of representatives designated by each State Party, with rotating Chairmanship, and shall meet for regular sessions to be held two times per year; additional sessions shall be convened at the request of one or more States Parties by the Chairman of the JCG, who shall promptly inform all other States Parties of the request. Such sessions shall be open no later than 15 days after receipt of such a request by the Chairman (JCG-Protocol (3, 4, 6)). The JCG-Protocol affirms that the JCG provides a

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553 E.g., address questions relating to compliance with or possible circumvention of the provisions of the Treaty, work out or revise, as necessary, rules of procedure, working methods, the scale of distribution of expenses of the JCG and of conferences, convened under the Treaty and the distribution of costs of inspections between or among States Parties, consider matters of dispute arising out of the implementation of the Treaty (Art. XVI(2A, F, I)). Note, that the Treaty refers to the States Parties as the actors under Art. XVI(2) ‘within the framework of the JCG’ and not of the JCG itself as the actor under Art. XVI(2). The Agreement on Adaptation CFE (1999) will not introduce fundamental changes.

554 As mentioned before, the term ‘decision’, especially when placed next to the term ‘recommendation’, can be deemed to refer to legally binding conclusions. Consensus shall be understood to mean the absence of any objection by any representative of a State Party to the taking of a decision or the making of a recommendation (Art. XVI(4)).
rather ‘loose’ institutional framework, through which the States Parties themselves act.555

3.4.2 Methods of verification in the CFE Treaty
Pursuant to Art. XIV of the CFE Treaty, each State Party shall have the right to conduct, and the obligation to accept, within the area of application, inspections in accordance with the provisions of the Protocol on Inspection (Art. XIV(1)). Inspections will be conducted explicitly not only for the purpose of verifying compliance with the numerical limitations set forth in articles IV, V and VI of the Treaty (Art. XIV (2A)), but also to monitor the process of reduction of conventional armaments and their re-categorisation (Art. XIV (2B,C)). Routine on-site inspections are offered here as a method for purposes of both verification and monitoring. An inspection can be conducted jointly, by more than one State Party. In that case, only one of them shall be responsible for the execution of the provisions of the Treaty (See Art. XIV(4)). Next to the on-site inspections, each State Party shall have the right to conduct, and each State Party with territory within the area of application shall have the obligation to accept, an agreed number of aerial inspections within the area of application (See Art. XIV(6)). The JCG shall consider and work out appropriate measures to ensure that information obtained through exchanges of information among the States Parties or as a result of inspections pursuant to the Treaty is used solely for the purposes of the Treaty, taking into account the particular requirements of each State Party in respect of safeguarding information which that State Party specifies as being sensitive (Art. XVI(2G)). Any reductions shall be subject to inspection, without right of refusal.556 The conduct of inspections has been arranged in detail in the Protocol on Inspection to the CFE Treaty, which is very comprehensive and both technically and financially demanding.557 For the purpose of ensuring

555 Many subjects addressed by the Protocol on the JCG are left to be decided by consensus by the JCG. E.g., sessions of the JCG shall not last longer than four weeks, unless it decides otherwise (par. 5); the JCG shall meet in Vienna, unless it decides otherwise (par. 7); the proceedings of the JCG shall be confidential, unless it decides otherwise (par. 10), the scale of distribution for the common expenses associated with the operation of the JCG shall be applied [as follows], unless otherwise decided by the JCG (par. 11).
556 See Art. VIII(13); Agreement on Adaptation CFE (1999), Art. VIII(5). The explicit denial of a right of refusal leaves unaffected the possibility that inspections be delayed in cases of force majeure, see Agreement on Adaptation CFE (1999), Section VI(1).
557 It consists of no less than thirteen sections, as follows. (Section) I: Definitions, II: General Obligations, III: Pre-inspection requirements, IV: Notification of intent to inspect, V: Procedures upon arrival at point of entry/exit, VI: General rules for conducting inspections, VII: Declared Site inspection, VIII: Challenge inspection within specified areas, IX: Inspection of certification, X: inspection of reduction, XI: Cancellation of inspections, XII: Inspection reports, XIII: Privileges and immunities of inspectors and transport crew members. Lang (1995), at p. 83-84, observes that given the need of technological and financial means necessary for carrying out these inspections, the CFE-Treaty cannot be considered a model to
verification of compliance with the provisions of the Treaty, each State Party shall facilitate inspections pursuant to the Protocol on Inspection (See Protocol on Inspection, Section II(1)). The inspecting State Party shall notify the State Party to be inspected of its intention to carry out an inspection provided for in Art. XIV of the Treaty (Section IV(1)). The Treaty makes a distinction between four different types of inspection, viz. declared site inspection, challenge inspection within specified areas, inspection of certification and inspection of reduction. The general rules regarding the freedom of access for the inspectors can be found in Section VI, including limitations on this freedom. Note, that an inspection team consists of a group of inspectors from one or more States Parties; it is not an internationalised inspection team. During an inspection of an object of verification or within a specified area, inspectors shall be permitted access, entry and unobstructed inspection within the entire specified area or within the entire territory of the declared site. Inspectors shall have the right to look into a hardened aircraft shelter to confirm visually whether any of the conventional armaments subject to the Treaty limitations are present. The inspectors are allowed to enter the shelter only with the approval of the so-called escort team. If approval to enter a shelter is denied and if the inspectors so request any conventional armaments present in the shelter shall be displayed outside. The escort team shall also have the right to deny access to sensitive points, to shrouded objects and to containers any dimension of which is less than two metres. In case the escort team declares that a sensitive point, shrouded object or container does contain conventional armaments, the escort team shall display or declare such conventional armaments and equipment to the inspection team and shall take steps to satisfy the inspection team that no more than the declared number of such conventional armaments and equipment are present. The right of inspectors to take photographs is limited with regard to sensitive points and

be used on a global scale.

558 The Agreement on Adaptation CFE (1999) adds two new types of inspection, viz. inspection within a designated area (in response to the notification of an exceeded territorial ceiling as a result of military exercise or a temporary deployment) and inspection of disposal of conventional armaments and equipment limited by the treaty in excess of reduction liabilities through destruction/modification.

559 See the (slightly different) definitions provided in the Protocol on Inspection, Section I(G) of the CFE Treaty and the Protocol on Inspection, Section I(F) of the Agreement on Adaptation CFE (1999). The latter definition expressly states that inspection teams are led by a representative of the inspecting State Party.

560 The categories of conventional armaments limited by the Treaty are battle tanks, armoured combat vehicles, artillery, combat helicopters, combat aircraft, reclassified combat-capable trainer aircraft, armoured personnel carrier look-alikes, armoured infantry fighting vehicle look-a-likes or armoured vehicle launched bridges.

561 The term 'escort team' means a group of individuals assigned by an inspected State Party to accompany and to assist inspectors conducting a particular inspection, as well as to assume other responsibilities as set forth in the Protocol on Inspection. See Section I (1H).
interiors of structures. Photography of those points and structures shall only be permitted with the approval of the escort team. In order to complete an inspection carried out in accordance with any of the Sections mentioned, the inspection team shall, before leaving the inspection site, provide the escort team with a written report. The escort team shall have the right to include its written comments in the inspection report and shall countersign the report. The report shall be factual and standardised per type of inspection. Depending on the Sections pursuant to which the inspection was conducted, it is prescribed what factual information shall be included in the reports.\footnote{562} As is common, the inspection report itself will not contain a review and an assessment of the factual information collected. The inspecting State Party and the inspected State Party shall each retain one copy of the report. At the discretion of either State Party, the inspection report may be forwarded to other States Parties and, as a rule, made available to the JCG.\footnote{563} There are no provisions on review of the information gathered during the inspections or on assessment regarding compliance.\footnote{564} Inspectors shall have the right to take measurements to resolve ambiguities that might arise during inspections. Such measurements recorded during inspections shall be confirmed by a member of the inspection team and a member of the escort team immediately after they are taken. Data as such confirmed shall be included in the inspection report (Section VI(37)). Furthermore, States Parties shall, whenever possible, resolve during an inspection any ambiguities that arise regarding factual information. Whenever inspectors request the escort team to clarify such an ambiguity, the escort team shall promptly provide the inspection team with clarifications. If an ambiguity cannot be resolved during the inspection, then the question, relevant clarifications and any pertinent photographs shall be included in the inspection report (Section VI(38)). There are no provisions that specify what kind of action will be taken to further clarify any ambiguities that were ascertained but not resolved during the inspection, albeit that one of the tasks of the JCG is to seek to resolve ambiguities and differences of

\footnote{562}{E.g., the reports of inspections pursuant to Sections VII and VIII shall include the inspection site, the date and time of arrival and of departure of the inspection team and the number and type, model or version of military vehicles that were observed during the inspection (see Section XII(4)). The Agreement on Adaptation CFE (1999), in Section XIV, has similar provisions.}

\footnote{563}{Section XII(7). The Agreement on Adaptation CFE (1999) prescribes that the inspection report shall be made available to each State Party upon request (Section XIV(8)).}

\footnote{564}{This implies that the information that has been gathered will be evaluated by individual States Parties. There does not exist in the CFE Treaty any kind of truly international inspection carried out by a special institution. Instead, verification is undertaken within the national responsibility of one State Party, mainly using its national means or possibly multilateral means. See Lang (1995), p. 82. See also De Jonge Oudraat (1992), p. 221: "[the] JGC (...) has no fact-finding functions nor does it make any judgements concerning compliance".}
interpretation that may become apparent in the way the Treaty is implemented (Art. XVI(2B)). It can be argued that on the basis of this article, the JCG could consider the inspection report, and, if necessary, take action to resolve any ambiguities left. In case an inspection would reveal non-compliance by the inspected State Party, this 'issue' could be placed on the agenda of the JCG (Art. XVI(3)). Pursuant to Art. XVI(2), the JCG can address questions relating to compliance with or possible circumvention of the provisions of the Treaty and consider matters of dispute arising out of the implementation of the Treaty. These provisions however can hardly be considered an appropriate follow-up after the detailed inspection activities.565

4. Dispute Settlement

4.1 Dispute settlement provisions in global arms control treaties that apply to uninhabited territories

*Antarctic Treaty.* The Antarctic Treaty contains a separate article on dispute settlement, which provides that if any dispute arises between two or more of the Contracting Parties concerning the interpretation or application of the Treaty, those Contracting Parties shall consult among themselves with a view to having the dispute resolved by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice (Art. XI(1)). This Article contains the obligation to settle disputes by peaceful means (also) outside those situations that are likely to endanger international peace and security, but with the same methods as mentioned in Art. 33 of the UN Charter.566 Any dispute concerning interpretation or application of the Antarctic Treaty which is not so resolved, shall, with the consent, in each case, of all Parties to the dispute, be referred to the ICJ for settlement. Failure to reach agreement on reference to the ICJ shall not absolve Parties to the dispute from the responsibility of continuing to seek to resolve it by any of the various peaceful means referred to in par. 1 of Art. XI (See Art. XI(2)).

*Outer Space Treaty.* Not only does the Outer Space Treaty lack a true verification mechanism, also provisions on dispute settlement mechanisms are absent. The monitoring provisions of the Treaty (Art. IX and XI) may prevent the emergence of disputes, but the Treaty is silent on what should

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565 Cf. Lang (1995), p. 83, who considers the absence of procedures for common actions against a violator of the treaty as an indication that priority has been given to unilateral action.
566 With the exception of 'resort to regional agencies or arrangements', see Art. 33(1) of the Charter. The obligation to settle the disputes of the character mentioned in Art. XI(1) by peaceful means flows from the provisions of the Antarctic Treaty, not from the UN Charter.
happen if, notwithstanding those provisions and the clear provisions on international State responsibility (Art. VI and VII), a dispute between the States Parties emerged. Obviously, if such a dispute were likely to endanger international peace and security, the States Parties should settle it by peaceful means (see Art. 33 of the UN Charter).

**Moon Agreement.** The provisions on dispute settlement in the Moon Agreement are part of the compliance control mechanism embodied in Art. 15 of the Agreement. If the verification process (eventually resulting in consultations between the States Parties) does not lead to a mutually acceptable settlement with due regard for the rights and interests of all States Parties, the Parties concerned shall take all measures to settle the dispute by other peaceful means of their choice appropriate to the circumstances and the nature of the dispute (Art. 15(3)). The Agreement furthermore specifies that any State Party may seek the assistance of the UNS-G, without seeking the consent of any other State Party concerned, in order to resolve the controversy. A State Party which does not maintain diplomatic relations with another State Party concerned shall participate in such consultations, at its choice, either itself or through another State Party or the UNS-G as intermediary (Art. 15(3)). This procedure resembles mediation, performed either by a ‘third’ State Party or by way of good offices of the UNS-G. The Agreement contains no further specification of methods of dispute settlement; hence, all appropriate peaceful means available may be used by the Parties.

4.2 *Dispute settlement provisions in other global arms control treaties*

**LTBT.** The LTBT contains no dispute settlement procedures. Especially in the mid-1980s, accusations were made to and fro by the US and the SU that the other one had violated the Treaty because of ‘venting’, i.e. the spreading out of radioactive substances outside the territory of the (underground) testing Party. In the absence of prescribed dispute settlement procedures, no formal attempts to settle a dispute by peaceful means with regard to the LTBT have been undertaken. Instead, from the outset differences have been

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567 This is the case if difficulties arise in connection with the opening of consultations or if consultations do not lead to a mutually acceptable settlement (Art. 15(3)). This implies that the UNS-G may start its functioning as an intermediary (if called upon) as soon as the States Parties involved have difficulty in opening consultations. Afterwards, when the consultations are in progress, this intermediary action is one of the peaceful means to settle a dispute that Parties can agree on if the consultations do not lead to a mutually acceptable settlement. The intermediary action of the UNS-G in order to let the Parties start their consultations is meant to enable the pursuance of the verification process; strictly speaking, it should therefore be considered part of the verification process. Otherwise, this intermediary action is a method of dispute settlement.
solved by the SU and the US through relatively low-keyed diplomatic exchanges.\textsuperscript{568}

\textit{Sea-Bed Treaty.} The Sea-Bed Treaty has no explicit references to methods of dispute settlement. If consultation and co-operation pursuant to Art. III(2, 3) of the Treaty have not removed the doubts concerning the activities and there remains a serious question concerning fulfilment of the obligations assumed under the Treaty, a State Party may, in accordance with the provisions of the Charter of the UN, refer the matter to the UNSC, which may take action in accordance with the Charter (see Art. III(4)). Given the nature of the obligations under the Sea-Bed Treaty, most formal disputes concerning questions of compliance that might arise will be serious enough to be referred to the UNSC in accordance with Art. III(4) of the Treaty.

\textit{NPT.} The NPT itself has no provisions on dispute settlement. The entire supervisory mechanism that is linked to the NPT can be found in the safeguards agreements of the IAEA. Hence, any references to specific dispute settlement procedures must be sought there.

\textit{BWC.} The supervisory mechanism of the BWC does not have a clear dispute settlement procedure. The text of the Convention consistently refers to ‘problems’ of the States Parties, not ‘disputes’. No doubt dispute settlement under Chapter VI of the UN Charter is included in the references made in Art. VI of the BWC.\textsuperscript{569} The Review Conferences of the BWC indicate a strong tendency towards the development of procedures for the \textit{prevention} of disputes, such as confidence building measures and the provision of specific and timely responses to any compliance concern alleging a breach of the obligations under the BWC, through the convening of a formal consultative meeting or on an inter-State basis.

\textit{ENMOD Convention.} The ENMOD Convention, like the BWC, offers the possibility to the States Parties to lodge a complaint with the UNSC (Art.

\textsuperscript{568} See Wainhouse (1968), p. 154. It can of course be questioned whether any formal disputes ever existed between the Parties. If this had been the case, Art. 33 (and perhaps even Art. 39) of the UN Charter would have been applicable to the dispute, considering the threat a clandestine nuclear test explosion would have posed to the maintenance of international peace and security.

\textsuperscript{569} Consultation and co-operation between the States Parties to the Convention pursuant to Art. V may also be undertaken ‘through appropriate international procedures within the framework of the UN in accordance with its Charter’. This indicates that if existing problems cannot be solved between the Parties, use can be made of the dispute settlement procedures mentioned in Art. 33(1) of the UN Charter. In case of serious disagreement, the issue will probably be brought before the UNSC in accordance with Art. VI of the BWC (the complaints procedure).
Consequently, it can be upheld that the possibility and necessity to settle disputes with the assistance of the UNSC and in accordance with Chapter VI of the Charter, is implied in the provisions of the ENMOD Convention. Given the very general wordings on consultation and cooperation of Art. V of the Convention, good offices of appropriate international bodies could be used as well.\footnote{\textsuperscript{571}}

\textit{Inhumane Weapons Convention.} The Inhumane Weapons Convention lacks direct and even indirect references to dispute settlement procedures. Of course, in the event that a dispute concerning the Convention would be likely to endanger international peace and security, the High Contracting Parties should settle their dispute peacefully (see Art. 33 UN Charter). Amended Protocol II has introduced an obligation for the High Contracting Parties to consult each other and to co-operate with each other bilaterally, through the UNS-G or through other appropriate international procedures, to resolve any problems that may arise with regard to the interpretation and application of the provisions of that Protocol (See Art. 14(4)).

\textit{APM Convention.} The States Parties shall consult and co-operate with each other to settle any dispute that may arise with regard to the application or the interpretation of the Convention. Each State Party may bring any such dispute before the Meeting of the States Parties. The Meeting may (try to) contribute to the settlement of the dispute by whatever means it deems appropriate, but it is clear from the text that the States Parties are in no way bound by its advice or recommendations (See Art. 10). The provisions on dispute settlement are without prejudice to the provisions on facilitation and clarification of compliance (i.e. Art. 8). In the course of such facilitation and clarification, and pending the convening of any meeting of the States Parties, any of the States Parties concerned may request the UNS-G to exercise his good offices to facilitate the clarification requested (Art. 8(4)); a possibility that already exists in general, on the basis of the UN Charter.

\footnote{\textsuperscript{570} Like in the BWC, the States Parties to the ENMOD Convention may undertake consultation and co-operation through appropriate international procedures within the framework of the UN and in accordance with its Charter (Art. V(1)). The remarks made in the previous footnote are equally valid for dispute settlement under the ENMOD Convention.}

\footnote{\textsuperscript{571} See Anastassov (1991), p. 273. He mentions as examples the World Meteorological Organisation and the UN Environmental Programme (UNEP).}
4.3 Dispute settlement provisions in regional arms control treaties

4.3.1 Dispute settlement provisions in Nuclear Weapon Free Zone Treaties

**Tlatelolco Treaty.** The Tlatelolco Treaty has a provision on the settlement of disputes in its 'new' Art. 25.\(^{572}\) Unless the Parties concerned agree on another mode of peaceful settlement, any question or dispute concerning the interpretation or application of the Treaty which is not settled shall be referred to the ICJ with the prior consent of the Parties to the controversy. This article affirms the contents of Art. 33 of the UN Charter albeit that no explicit or implicit reference to 'resort to regional agencies or arrangements' has been made in the Treaty, even though this is mentioned in Art. 33(1) of the UN Charter as a means of dispute settlement and the Tlatelolco Treaty is closely connected to regional arrangements, in particular the OAS.\(^{573}\) Moreover, OPANAL itself is a regional organisation (Art. 7). In contrast to its once comprehensive role in the verification process, OPANAL apparently is not meant to be a dispute settlement body.

**Rarotonga Treaty.** The Rarotonga Treaty has no provisions on dispute settlement.\(^{574}\) Even though the general dispute settlement procedures of Chapter VI of the UN Charter evidently apply also to this Treaty, given the nature of the provisions of the Rarotonga Treaty in most cases disputes will be settled by the Parties within the framework of the South Pacific Forum, which is the most appropriate body in the region.

**Pelindaba Treaty.** Annex IV of the Pelindaba Treaty is entitled 'Complaints procedure and settlement of disputes'. However, this Annex seems to be lacking any direct reference to a dispute settlement procedure. Annex (4f) provides that if the Commission considers that the Party complained of is in breach of its obligations under the Treaty, or that the provisions of Annex IV have not been complied with, States Parties to the Treaty 'shall meet in

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\(^{572}\) Due to the amendment of 26 August 1992 (OPANAL General Conference Res. 290 (VII)), old Art. 20 etc. have been renumbered as 21, etc. See CD/1196, 8 April 1993, p. 4.

\(^{573}\) Before the amendment, this connection to the OAS appeared strongly from Art. 14(3), 16(6) and 21. Now, only Art. 22 ('old' Art. 21) of the Treaty is left, which reads: "None of the provisions of this Treaty shall be construed as impairing the rights and obligations of the Parties under the Charter of the UN or, in case of States Members of the OAS, under existing regional treaties." New Art. 20(1) also explicitly provides that the Agency may enter into relations with any international organisations or body, especially any which may be established in the future to supervise disarmament or measures for the control of armaments in any part of the world. See CD/1196, 8 April 1993, p. 4.

\(^{574}\) Albeit that Art. 10 of the Rarotonga Treaty provides that a meeting of the Consultative Committee can be convened for consultation and co-operation on 'any matter' arising in relation to the Treaty. It would however be very unlikely to interpret this provision as a dispute settlement clause.
extraordinary session to discuss the matter’. This session, held after an assessment in the verification process has been made, seems more appropriate to discuss matters of correction/enforcement than to settle disputes.

*Southeast Asia NWFZ Treaty*. The Southeast Asia NWFZ Treaty deals explicitly with the settlement of disputes in Art. 21. Any dispute arising from the interpretation of the provisions of the Treaty shall be settled by peaceful means as may be agreed upon by the States Parties to the dispute. If within one month the Parties to the dispute are unable to achieve a peaceful settlement of the dispute by negotiation, mediation, enquiry or conciliation, any of the Parties concerned shall, with the prior consent of the other Parties concerned, refer the dispute to arbitration or to the ICJ. Like in its provisions regarding verification, the Southeast Asia NWFZ Treaty fixes a time for the settlement of disputes. The first reference to peaceful means ‘as may be agreed upon by the Parties’ and the second reference which specifies particular means of dispute settlement (negotiation etc.) is somewhat odd. It is clear from the wording of Art. 21 that if necessary, disputes should ultimately be settled by a legal body. However, as mentioned before it can be doubted whether practice will ever witness the application of provisions like these.

4.3.2 Dispute settlement provisions in the CFE Treaty
Contrary to what might be expected from a Treaty with such a comprehensive verification regime, the CFE Treaty only very modestly refers to dispute settlement, in that one of the tasks of the JCG is to consider matters of dispute arising out of the implementation of the CFE Treaty (Art. XVI(2)). Especially in regard of the nature of the subject of this Treaty, which relates to security in Europe and purports to stabilise East-West military relations, a serious dispute will be likely to endanger international peace and security, so that in general Art. 33 of the UN Charter will be applicable to disputes arising under the CFE Treaty. Also OSCE dispute settlement procedures may probably be made use of, given the negotiating framework of the CFE Treaty.\(^{575}\)

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5. Correction/enforcement

5.1 Provisions on correction/enforcement in global arms control treaties that apply to uninhabited territories

Antarctic Treaty. Article X of the Antarctic Treaty provides that each of the Contracting Parties undertakes to exert appropriate efforts, consistent with the Charter of the UN, to the end that no one engages in any activity in Antarctica contrary to the principles or purposes of the Antarctic Treaty. Taking into account the fact that the Antarctic Treaty has separate provisions on verification (e.g., Art. VII) and an article on dispute settlement (Art. XI), the reference to the Charter of the UN in Art. X implies that the Contracting Parties are allowed to refer ‘matters’ to the UNGA or to the UNSC. In this respect it can be noted that the Consultative Meeting of the Antarctic Treaty has observed that “in the execution of the principles and objectives of the Treaty, there would be uniformity of practice in the activity of all the Parties active in the Antarctic, and the Recommendations approved must be understood in the light of the obligations assumed by Contracting Parties under the terms of the Treaty, particularly Art. X.”576 From this it appears that also ‘violations’ of approved Recommendations may give rise to sanctions. Finally, in the specific case of the Antarctic Treaty the threat of restricting the rights and privileges of the Contracting Parties under the Treaty may constitute an effective and important ‘internal’ sanction.

Outer Space Treaty. There are no references to enforcement action present in the Outer Space Treaty. In cases of possible non-compliance revealed through monitoring activities pursuant to the provisions of the Treaty, the UNSC could of course decide to conduct an investigation (cf. Art. 34 UN Charter).

Moon Agreement. The supervisory mechanism of the Moon Agreement ‘ends’ after the phase of dispute settlement. The fact has been mentioned that the UNS-G shall be informed of the results of consultations between the States Parties and might even be asked to offer assistance (See Art. 15(2, 3)). This means that the UNSC will also be properly informed if any situation arises which could lead to international friction or give rise to a dispute the continuance of which would be likely to endanger the maintenance of international peace and security (cf. Art. 34 UN Charter). Still, these stipulations concerning the role of the UN can be considered too

general so as to effectively control or limit an arms race in outer space, should it ever (again) occur.577

5.2 Provisions on correction/enforcement in other global arms control treaties

LTBT, NPT, Inhumane Weapons Convention. It is almost needless to say that the LTBT does not contain provisions on correction/enforcement. With no provisions on monitoring or on verification, there is no basis in the Treaty for treaty-specific provisions of that kind. The NPT and the Inhumane Weapons Convention are likewise silent on measures of correction/enforcement.

APM Convention. The APM Convention, even though it contains provisions on monitoring and verification, does not contain any references to sanctions or other measures to enforce compliance. The extensive role of the UNS-G in the Convention's supervision, however, suggests that the UN will readily become involved if non-compliance with the APM Convention gives rise to a threat to international peace and security.

Sea-Bed Treaty. From Art. III(4) of the Sea-Bed Treaty which arranges the dispute settlement under this Treaty, it can be deduced that the UNSC may take enforcement action in accordance with the UN Charter after a State Party has referred the matter to it.578

BWC. It has already been observed that in the BWC there is an intermixture of verification and correction, since the UNSC performs both. Almost all references to the UNSC in the BWC relate to its role as the verifying body of that Convention, with perhaps one exception in Art. VII, which provides that each State Party to the BWC undertakes to provide or support assistance, in accordance with the UN Charter, to any Party which so requests, if the UNSC decides that such Party has been exposed to danger as a result of violation of the BWC. This decision of the UNSC may lead it to adopt a certain kind of co-ordinating role for protective purposes.

ENMOD Convention. Under the ENMOD Convention, States Parties to the Convention can lodge a complaint with the UNSC (Art. V(3)). The intermixture between verification and correction is less of a problem than under the BWC, since the ENMOD Convention offers the opportunity to establish a Consultative Committee of Experts which functions as an ad hoc verifying body but which has no enforcement powers. Like under the BWC,

most provisions in the ENMOD Convention which relate to the UNSC refer to its role as verifying body.\(^{579}\)

5.3 Provisions on correction/enforcement in regional arms control treaties

5.3.1 Provisions on correction/enforcement in Nuclear Weapon Free Zone Treaties

*Tlatelolco Treaty.* The Tlatelolco Treaty, with its extensive supervisory mechanism, has provisions on measures in the event of violation of the Treaty in its ‘new’ Art. 21.\(^{580}\) As described before, the General Conference shall take note of all cases in which, in its opinion, any Contracting Party is not complying fully with its obligations under the Treaty. In such cases, the General Conference shall draw the matter to the attention of the Party concerned, making such recommendations as it deems appropriate (See Art. 21(1)). Since the determination by the Conference is only a recommendation, it does not bind the Parties.\(^{581}\) The provisions of par. 1 of Art. 21 are clearly meant to deal with ‘minor’ cases of non-compliance that do not endanger peace and security.\(^{582}\) If in the opinion of the General Conference, such non-compliance constitutes a violation of the Treaty which might endanger peace and security, the General Conference shall report thereon simultaneously to the UNSC and the UNGA through the UNS-G and to the Council of the OAS. The General Conference shall likewise report to the IAEA for such purposes as are relevant in accordance with its Statute (See Art. 22(2)).

*Rarotonga Treaty.* The Rarotonga Treaty makes no references to enforcement action. The only Treaty-provision that refers to what should happen after the process of verification under the Treaty has come to an end can be found in Annex 4, on the Complaints Procedure. Annex 4(9) provides that if the Consultative Committee has decided that the Party complained of is in breach of its obligations under the Treaty, or that the provisions of Annex 4 have not been complied with, or at any time at the request of either the complainant or complained of Party, the Parties shall meet promptly at a meeting of the South Pacific Forum. Clearly, the Forum is recognised as the

\(^{579}\) An exception to this can be found in Art. V(5), which has wordings comparable to those of Art. VII of the BWC. Sur (1988), p. 25, regards this provision as one clearly legitimising the use of countermeasures in reaction to a violation of the ENMOD Convention.

\(^{580}\) Due to a renumbering of the Treaty, old articles 20 etc. have become Art. 21, etc.


\(^{582}\) The use of the words ‘not complying fully’ (it. added), the fact that an organ of the Agency established by the Treaty deals entirely with the matter by making (non-binding) recommendations and the explicit reference to cases that might endanger peace and security in par. 2 of Art. 20 provide sufficient evidence for this view.
supreme political body in the region. The South Pacific Forum can be expected to bring serious matters to the attention of the UNGA or the UNSC in case this would be necessary.

Pelindaba Treaty. In the Pelindaba Treaty, the States Parties meet in extraordinary session in case of non-compliance by a Party complained of. The States Parties convened in extraordinary session may, as necessary, make recommendations to the Party held to be in breach of its obligations and to the OAU. The OAU may, if necessary, refer the matter to the UNSC (Annex IV (4g)).

Southeast Asia NWFZ Treaty. There are provisions on ‘remedial measures’ in Art. 14 of the Southeast Asia NWFZ Treaty. In case the Executive Committee decides in accordance with the Annex on the procedure for a fact-finding mission that there is a breach of the Treaty by a State Party, that State Party shall within a reasonable time take all steps necessary to bring itself in full compliance with the Treaty and shall promptly inform the Executive Committee of the action taken or proposed to be taken by it (Art. 14(1)). This is a kind of ‘basic’ obligation which mutatis mutandis can be considered to lie at the basis of the correction/enforcement phase of any given arms control treaty. Where a State Party fails or refuses to comply with the provisions of Art. 14(1), the Executive Committee shall request the Commission to convene a meeting (See Art. 14(2)). At this meeting, the Commission shall consider the emergent situation and shall decide on any measure it deems appropriate to cope with the situation, including the submission of the matter to the IAEA and, where the situation might endanger international peace and security, the UNSC and the UNGA (see Art. 14(3)). It is the Commission, a body of the Treaty, that decides on referring the matter to the IAEA, the UNGA or the UNSC. In the event of the breach of the Protocol attached to the Treaty by a State Party to the Protocol, the Executive Committee shall convene a special meeting of the Commission to decide on appropriate measures to be taken (see Art. 14(4)). This provision on limited action regarding violation of the Protocol does not mean the violation of the Protocol is considered less important or less serious than a violation of the other provisions of the Treaty. The reason is

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584 Note, that the Treaty at this point refers to a ‘reasonable’ time, whereas in other provisions the Treaty places strict and fixed time-limits on the State Parties.

585 The Treaty provides that this meeting shall be convened in accordance with the provisions of Par. 3(e) of Article 9. This paragraph provides only that one of the functions of the Executive Committee shall be to request the Commission to convene a meeting ‘when appropriate and necessary’, without giving any additional information.
that the Protocol (prescribing respect for the Southeast Asia NWFZ) is only open for signature by the declared NWS. As yet, this Protocol has not been ratified by the NWS because of disputed territories in the South China Sea. In case one of the NWS would sign and thereupon would violate the Protocol by using or threatening the use of nuclear weapons against any State Party to the Treaty, this ‘matter’ would inevitably be brought under the attention of the appropriate organs of the UN long before the Commission could have decided to do so.

5.3.2 Provisions on correction/enforcement in the CFE Treaty
As has already been observed, the CFE Treaty has no proper follow-up after an inspection has been carried out pursuant to the extensive provisions of the Protocol on Inspection. Article XVI(2A) provides that the JCG can address questions relating to compliance with or possible circumvention of the provisions of the Treaty. Given the fact that each State Party has the right to have placed any issue relating to the Treaty on the agenda of the JCG (Art. XVI(3)), it can be reasonably expected that issues relating to correction of the misbehaviour of a State Party will be dealt with in the JCG. Pursuant to Art. XXI(2) of the CFE Treaty, ‘the Depository shall convene an extraordinary conference of the States Parties, if requested to do so by any State Party which considers that exceptional circumstances relating to the Treaty have arisen (...).’ From these wordings, it seems likely that in reaction to a violation of the Treaty - probably instead of or in addition to a meeting of the JCG - also a meeting of the States Parties pursuant to Art. XXI(2) can be convened. If necessary, referral of the matter to the appropriate organs of the UN will no doubt take place, even though no explicit reference to the UN has been made in the text of the CFE Treaty.

587 The Agreement on Adaptation CFE (1999), adds the new Art. XXI(1bis), which provides that upon notification of a temporary deployment exceeding a territorial ceiling by more than prescribed numbers of TLE, or upon request by a State Party, the Depository shall convene a conference of the States Parties at which the hosting and deploying States Parties shall explain the nature of the circumstances which have given rise to the temporary deployment. The Chairman of the JCG shall inform the Permanent Council and the Forum for Security Co-operation of the OSCE of the situation.
588 The sensitive nature of the provisions of the CFE Treaty will bring along that in case of serious violations immediately the aid of the organs of the UN will be invoked. Lang (1995), p. 83, concludes from the absence of references to the UN that regional security in the CFE Treaty is perceived as a co-operative endeavour but not as a matter of collective security within the meaning of the UN Charter.
6. The interpretative element

Most of the arms control treaties discussed do not contain explicit references to the interpretation or specification of the rules of the treaty as part of the supervisory process.\(^{589}\) This is not surprising, since the presence of the interpretative element as such cannot be deduced from the text of a treaty, but instead will come to the fore, if at all, during gatherings at which the Parties to a treaty consult and discuss matters that have arisen. If these gatherings are institutionalised, e.g. in the form of meetings of organs (plenary organs or smaller, ‘executive’ organs) of a supervising organisation established under the treaty, the interpretative element will for the most part be implemented in the review stage of the process of verification. It can thus be upheld that most of the time, the supervising body established by the treaty, be it an informal body such as the JCG (CFE Treaty), an organ such as the UNSC (BWC, ENMOD Convention) or a specialised international organisation such as OPANAL (Tlatelolco Treaty), will be the one implementing the interpretative element, during meetings, consultation rounds and informal discussions regarding the behaviour (including possible non-compliance) of the States Parties. During the meetings, consultation rounds and discussions, the exchange of information takes place and measures in furtherance of the principles and objectives of the treaty concerned may be formulated, considered and recommended. It is not inconceivable that as a result of these meetings and discussions, a refinement and clarification of rules will occur, which is what the interpretative element is about. In the rare case that the tasks of an organ under the treaty have been strictly limited to fact-finding, this organ is unlikely to make contributions to the interpretative element.

This does not mean however, that an institutional framework including a supervising body would be a prerequisite for the implementation of the interpretative element in supervision. For the processing of the findings of the verification and also the dispute settlement phase usually takes place in Review Conferences, which can be considered to fulfil purposes partly similar to the interpretative element. In the absence of any treaty-specific supervisory mechanism, Review Conferences have tended to become a means through which concerns about verification and compliance can be voiced. Many arms control treaties have a provision on Review Conferences for the purpose of reviewing the operation of the treaty.\(^{590}\) Review

\(^{589}\) An exception is the CFE Treaty, in which it is explicitly stated that the States Parties, within the JCG, shall seek to resolve ambiguities and differences of interpretation that may become apparent in the way the Treaty is implemented (Art. XVI(2B)).

\(^{590}\) See Antarctic Treaty, Art. XII(2); Moon Agreement, Art. 18; Sea-bed Treaty, Art. VII; NPT, Art. VIII(3); BWC, Art. XII; ENMOD Convention, Art. VIII; Inhumane Weapons Convention, Art. 8(3); Rarotonga Treaty, Art. 10; Southeast Asia NWFZ Treaty, Art. 20; CFE Treaty, Art. XXI(1); APM Convention, Art. 12.
Conferences can usually take place every five (or sometimes ten) years. The States Parties may of course decide that no (further) Review Conference is necessary. Through the Review Conferences the provisions of the supervisory mechanism can be interpreted in such a way as to contribute to the strengthening of the treaty regime. If at the first Review Conference of a given treaty the interpretation of certain rules of the treaty takes place, this interpretation will be valid at least for the period of time between this first Review Conference and a second Review Conference. The performance of activities of supervision, and especially the process of verification, in the time-frame between both Review Conferences will take place taking into account the earlier interpretations.

Reports by States and comments by experts, usually prepared further by the Preparatory Committee of the Review Conference, may be efficient elements of information in the context of reviewing the operation of the supervisory mechanism of the treaty. In this way, the supervising body will be able to oversee the effect of a rule, which may result in a more liberal interpretation or even a modification of this rule. Apart from reports on the functioning of the supervisory mechanism and the record of compliance, new scientific and technological developments relevant to the functioning of the arms control treaty will also be discussed in Review Conferences.

7. Concluding remarks on the general features of supervisory mechanisms

Now that the most representative provisions of the supervisory mechanisms of the multilateral arms control treaties currently in force have been discussed in detail, it is possible to draw some conclusions as to their general features. It has been argued that in arms control treaties no common characteristics of supervision (especially verification) can be found. Indeed, one might say that in arms control law the differences between the treaties rather than their similarities predominate, viz. differences in time

591 The Antarctic Treaty provides for one Review Conference after thirty years from the date of entry into force. The Moon Agreement can be reviewed every five years after entry into force, like the Sea-Bed Treaty, the NPT, the ENMOD Convention, the BWC (five years or earlier), the APM Convention (five years and thereafter if so requested) and the CFE Treaty (every five years; first Review Conference forty-six months after entry into force). The Inhumane Weapons Convention and the Southeast Asia NWFZ Treaty can be reviewed ten years after entry into force. The Rarotonga Treaty does not specify a time-frame for its Review.

592 E.g., the 1971 Sea-Bed Treaty was reviewed in 1977, 1983 and 1989. No need was felt to hold a fourth Review Conference. See Myjer (1994), p. 158.


and political background, diversity of the negotiating bodies, differences in the treaty's object and spirit, diversity of methods of supervision and of institutional design. However, despite all those differences it is possible to present an overview of the general features that are common to the supervisory mechanisms of the arms control treaties analysed in this chapter. In this overview, no normative validation is implied - no conclusions as to the effectiveness of supervision relative to the existence of a specific supervisory mechanism are drawn.

7.1 General features of monitoring provisions in arms control treaties
With regard to monitoring provisions, it can be observed that in many of the arms control treaties the exchange of information takes place primarily for the general purpose of co-operation or that it is linked to a suspicion and therefore systematically belongs to the process of verification. Monitoring is performed unilaterally (NTMs) or co-operatively through declarations, annual reports or other sources of information that may (depending on the terms of the treaty) be distributed to all States Parties. When reference is made to NTMs they are usually described as 'National Technical Means of verification', although in many cases the use of those NTMs satisfies monitoring conditions (ongoing and 'incident-independent'). All NWFZ Treaties have more or less extensive provisions on monitoring activities. Parties undertake to exchange information and to report any significant event to the supervisory forum or body, be it a body established by the treaty itself or an existing regional organisation. Monitoring activities may also be performed through consultations at the regular meetings of the States Parties. During these consultations States Parties usually review the operation and application of the treaty, including its supervisory mechanism. While declarations and reports represent the most frequently used methods of monitoring, routine on-site inspections are also often available. The connection between the monitoring provisions and verification is clear: the information provided in the phase of monitoring will, if necessary, be used as a source in the stage of fact-finding within the verification process.

595 More precisely, it can be concluded that with respect to the phase of monitoring, the global arms control treaties that apply to uninhabited territories only contain general provisions on the exchange of information, which as a side-effect may enable the de facto monitoring of compliance with the basic obligations of the respective treaties. With regard to the other global arms control treaties, it can be concluded that most of them do not contain provisions on the exchange of information unrelated to any suspicion. Certain provisions, which relate to co-operation for peaceful purposes, might reveal possible non-compliance, but they cannot be considered sufficient to provide for the ongoing monitoring of compliance with the treaty. Occasionally, in practice the extensive interpretation of treaty provisions during Review Conferences has induced regular exchange of information (e.g. under the auspices of the UNS-G, such as in the case of the BWC).
7.2 General features of verification provisions in arms control treaties

It appears that within most arms control treaties the phase of verification has received considerable attention. In general, the establishment of some kind of forum or body can be considered a prerequisite for the functioning of the verification process, that by its nature needs a third party as supervisor. Several treaties establish some kind of committee as verifying body. This type of body is usually not a standing body and lacks real power because its procedure is not compulsory. Instead, the States Parties are free to make use of the procedure but may choose other means as well. The NWFZ Treaties contain rather elaborate supervisory mechanisms, including institutionalised supervising bodies that are meant to play an important role in the verification process. In the absence of a third party, ad hoc co-operation with regard to verification activities is required; this type of verification bears many ‘subjective’ characteristics and the treaty can offer only few guarantees for the proper functioning of verification (as becomes clear from e.g. the text of the Sea-Bed Treaty). Most treaties provide that the States Parties may in the course of the verification process invoke the help of other States or international organisations, including the UN. As the texts of the treaties show, on-site inspection (sometimes called a ‘visit’), in some cases supplemented by aerial inspection, is the most important method of verification. Apart from the information received through monitoring activities, the performance of the fact-finding stage within the verification process is almost entirely dependent on the method of inspection. On-site inspection itself may be merely designated as a possible method of verification, as in the Antarctic Treaty, or it may be arranged in extensive detail, as in the Protocol on Inspection to the CFE Treaty. Inspectors may be nationals of the inspecting Parties (e.g. Antarctic Treaty, CFE Treaty) or international inspectors (e.g., IAEA inspectors in NWFZ treaties). As such, the method of inspection has been ‘internationalised’ to a lesser or higher degree. The review stage of verification cannot be identified as such in the text of the arms control treaties. It is however clear that any ‘conclusions’ (regarding compliance) may only be drawn from (inspection or other) reports after a proper review of the information gathered has taken place, e.g. in extraordinary or special sessions of (the plenary organ of) the supervising body. Regarding the stage of assessment, in which it is established whether (and if so, to what extent) the treaty has been violated by the suspected State Party, explicit references have only in rare cases been laid down in the treaty text, viz. in those treaties where a body has been established that can take decisions which are binding on the States Parties. This may well be the same (‘executive’) body that has been granted the power to decide - upon request - that a suspected State Party must allow the conduct of an on-site inspection on its territory. Assessments made by this type of body can be expected to have legal consequences as well; in case of an established violation there eo ipso exists an obligation for the violator to

217
remedy negative consequences, in accordance with the law of State responsibility. Otherwise, ‘assessments’ are mere summaries of consultations between the States Parties directly concerned, i.e. at least the State Party that believes another to be in violation of the treaty and this other, suspected, State Party.

7.3 General features of dispute settlement provisions in arms control treaties

In general, special dispute settlement procedures cannot be found in arms control treaties. This may be explained partly from the fact that some treaties increasingly place emphasis on the prevention of disputes (e.g. BWC) and that procedures for the peaceful settlement of disputes are available under general international law, pursuant to Chapter VI of the UN Charter. Some treaties mention mediation through a third State Party or through the assistance of the UNS-G (Outer Space Treaty, Moon Treaty). Other treaties directly refer in this respect to the assistance of the UNSC, which can be invoked by the States Parties and in some cases also by an appropriate regional organisation. The appropriate organs of the UN can of course also play their part in dispute settlement if an explicit reference to their possible involvement is absent in a treaty. Where specific methods of dispute settlement are summed up in the treaty provisions (e.g. Antarctic Treaty, Southeast Asia NWFZ Treaty), the methods listed in Art. 33(1) of the UN Charter are mentioned, notably with the exception of the possibility to ‘resort to regional agencies or arrangements’.

7.4 General features of correction/enforcement in arms control treaties

Since enforcement action under a treaty will only be directed against a State Party of which it has been established that it has violated the provisions of that treaty, the existence of at least some kind of verification mechanism is a prerequisite for treaty-based provisions on correction/enforcement. In arms control treaties that contain a verification mechanism, an assessment of non-compliance made pursuant to this mechanism not only constitutes the establishment that a violation of the treaty has occurred, but also provides a legal basis for the application of sanctions against the defaulting State Party. Treaties that contain references to enforcement action commonly provide that the Parties (or in some cases, regional organisations) can refer the matter to the appropriate organs of the UN. Even though the notion of ‘referring’ matters to the UN may include the dispute settlement activities of those organs, the context of reference (i.e. after a violation has been established) suggests that the UNSC in that respect is called upon to act in its ‘enforcing’ capacity. Treaties that establish a forum or body usually provide that, before addressing the organs of the UN, the States Parties to the treaty shall first meet in special or extraordinary session of this forum or body to discuss the matter among themselves.