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**A comparison of self-evaluating
state reporting systems**

— II —

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CHAPTER 7

DISARMAMENT TREATIES

The reporting procedure on the implementation of disarmament treaties is called "verification". One of the main goals of verification is confidence-building between old adversaries, most notably the USA and the former USSR.

There is no general official and universally-accepted definition of verification. It includes the following components:

- (1) the existence of an obligation, the fulfilment and observance of which must be verified;
- (2) the gathering of information relating to fulfilment of the obligation;
- (3) the analysis, interpretation and evaluation of the information from a technical, legal and political viewpoint;
- (4) assessment concerning observance or non-observance of the obligation, which concludes the actual verification exercise. While the consideration of appropriate reactions to possible violation of an obligation appears to be a logical consequence of this exercise, it is not in itself an integral part of verification.³⁴

7.1 Organizations

Two types of practices and proposals can be distinguished in the field of verification of arms control agreements. There are organizations dedicated solely to verification, and there are international organizations with a broader mandate that have received, or will receive a verification or monitoring function. There are only a few organizations, exclusively devoted to verification/monitoring.

The idea of multilateral and international organizations dedicated to or operative in the field of the verification of arms control agreements is currently receiving renewed and heightened interest, under the impetus of the CFE, CSCE and CW negotiations, and of the Gulf War settlement.

Various factors may explain this renewed interest in the role of international organizations:

³⁴ U.N. Doc. UNIDIR/92/28, 1.

- increased importance is being attached to the verification of disarmament agreements;
- the institution-building process is considered to have a high confidence-building potential;
- economic considerations may motivate advocacy of involvement by international organizations;
- the wish to deny access to certain types of weapons can also be considered a positive factor.³⁵

The involvement of international organizations is opposed, however, on the grounds of economic circumstances and the confidentiality of the data. Another major objection is related to the political and legal elements of the verification process: no State is eager to delegate decisions that involve compliance to a third party or to an international body. There is a fine line between fact-finding and the political qualification of facts in an international co-operative environment.³⁶

The UN Security Council may intervene in the verification process. The Council may carry out its own investigations and make its own assessments, as it did, for example, when chemical weapons were used in the conflict between Iraq and Iran.

Issues relating to the Gulf War, and the disarmament measures adopted by the Security Council in Resolution 687 (1991), which involve international control, raise problems of a different kind, namely, the consequences and settlement of an international conflict, rather than the verification of certain treaties. The obligations verified are those resulting from the Resolution and not directly from the treaties to which it refers. Certain obligations, for example, those relating to the destruction of missiles, do not fall under the aegis of any specific treaty.³⁷

7.2 Functions

An international organization can provide technical services and assistance, or it can be a political mechanism for consultation. The former necessitates far greater investment and warrants a more integrated type of organization than does the latter. However, if the latter is really involved in evaluating data in compliance

³⁵ C. de Jonge Oudraat, "International Organizations and Verification", in *Verification of Disarmament or Limitations of Armaments: Instruments, Negotiations, Proposals*, UNIDIR, 1992, 207-208.

³⁶ See note 35.

³⁷ U.N. Doc. UNIDIR/92/28, 3.

issues, it will sooner or later also require an independent information and data-assessment capability.

Apart from the above, the organizations can have three functions: fact-finding (i.e., the collection and analysis of information and data); political and legal qualification of facts; and enforcement (i.e., responses, including possible sanctions).

The initial provision of data is the responsibility of each State concerned, and usually involves an exchange of data. It may, however, involve some participation by international organizations.

There are two types of fact-finding methods:

Surveillance is the systematic observation of some place or activity on a continuous or periodic basis; this may be divided into:

- intrusive methods, i.e., methods implying the presence of either a human agent or an instrument on a State's territory; and
- non-intrusive methods, such as remote-sensing techniques, particularly observation by satellites or perusal of scientific material.

Reconnaissance is carried out in the form of missions or *ad hoc* activities, generally aimed at a specific objective which for some reason has attracted attention.

Further distinction may be made between:

- hard/objective methods, i.e., information collected by technical means such as satellites, on-site inspection, or documentary control, and
- soft methods, i.e., information collected through political consultation mechanisms.³⁸

Extra information-gathering techniques are a procedure for monitoring the data, possibly with on-site inspection measures, carried out by the parties on the basis of an international instrument. These inspections can be carried out either at random, or in the event of questionable activities. In this context, an international organization may, on occasion, intervene in order to establish the facts,

³⁸ See note 35.

as in the case of investigations into the alleged use of chemical or biological weapons.

The monitoring step is accompanied or followed by an information-processing step in which data recorded by the monitoring device are assembled into some appropriate form.

The technical analysis of data collected usually remains the responsibility of each State party; it may be simplified by cooperation among the parties in an *ad hoc* or pre-established context, by international assistance, or by an autonomous international mechanism, although the latter continues to be an exception.

The political and legal qualification of the data is, in principle, also the responsibility of each of the parties concerned; however, it may involve an international dimension, in particular through the machinery of advisory commissions among the parties, or through a genuine collective procedure.

An assessment of the seriousness of a possible breach is made in the same way, although its nature is more directly political. What must be assessed are the implications of the breach for the security of the States concerned. Possible publication and dissemination of the data continue to be at the discretion of the parties concerned.

A new method of verification is "citizens' verification", which in principle resembles the individual complaints procedure under the UN Human Rights Conventions. There is a precedent in US national law, where it is a duty of employees in the defence industry to report companies that are defrauding the government. It would be necessary to provide a duty and protection under the treaty, as well as mechanisms for evaluating information. At the moment it is doubtful whether such a system would receive support from States involved in or contemplating disarmament.

7.3 Treaties past and present

There are currently 24 arms control agreements in force, or recently signed; of these, three provide for the establishment of **international organizations with the specific aim of verifying compliance** with the agreement: the Modified Brussels Treaty of 1954, establishing the Western European Union and the now defunct Arms Control Agency; the Treaty of Tlatelolco establishing OPANAL (Agency for Prohibition of Nuclear Weapons in Latin America, 1976, known by its Spanish acronym); and the Guadalajara Agreement between Argentina and Brazil establishing the Argentine-Brazilian Agency for Accounting and Control of Nuclear Materials (ABACC).

The bilateral (US-USSR) treaties, as well as the multilateral CFE Treaty, opted for a less institutionalized mechanism, namely, the **Consultative Commission**. The Antarctic Treaty, which should also be mentioned, establishes a **Meeting of Contracting Parties**.

The vast majority of multilateral agreements, however, do not provide for the establishment of an international organization or mechanism dedicated to verification, though some of the agreements leave open the possibility for creation of such a mechanism, through a clause permitting resort to "appropriate international procedures".

There are also treaties, such as the Biological Weapons Convention (BWC) and the 1925 Geneva Protocol prohibiting the use in war of asphyxiating, poisonous or other gases and of bacteriological warfare, that have no verification system.

7.3.1 Specialized institutions

The Arms Control Agency (ACA) is now defunct, but some remarks can be made on its functioning. It has been, over the years, a relatively independent and autonomous body, even with regard to the Council of the Western European Union, to which the Agency was directly answerable.

The Agency was always relatively small: in 1971, for instances, it had a staff of 52, including 21 of officer grade, and an annual budget of 3,900,000 BFRs.

The most interesting aspect of the WEU verification scheme lies in the fact that an integrated, international body carried out the verification. Most noteworthy in this respect are its experiences in the fields of data exchange and of random inspections.

Since 1984, when Member States decided to reactivate the WEU and to abolish all conventional controls by 1986, the status of the ACA has become unclear. A Director was supposed to be appointed in 1988, but never was. Apparently the Council annual reports no longer include Agency activities, and the Agency has *de facto* ceased to exist.

Compared with ACA, the OPANAL is far more institutionalized and autonomous (integrated). The fact-finding methods at its disposal to verify compliance include:

- semi-annual reports by the parties incorporating statements that "no activity prohibited under the Treaty has occurred";
- special reports by the parties which may be requested by the General Secretary with the authorization of the Council;

- special reports or studies by the General Conference, the Council or the General Secretary;
- special inspections carried out by the Council;
- routine inspections carried out under a safeguards agreement negotiated by each party with the IAEA.

The legal and political evaluation of facts is left to the General Conference. OPANAL has a very small international staff and an annual budget of \$ 316,251. Little is published on the workings of OPANAL, and the proceedings of its General Conference are not widely disseminated. The comprehensiveness — both in terms of functions assigned to it and in terms of procedures and methods it is capable of invoking — as well as the international nature of the organization stand somewhat in contrast to its known activities. The fact that it has not yet had to implement any special procedures, such as inspections or requests for special reports, seems to be a positive sign. Nonetheless, it should not be forgotten that for the major countries of the region the Treaty has not yet entered into force. As in the case of the ACA, political reasons preclude OPANAL's fully exercising its theoretically far-reaching powers.

The ABACC has in principle the same form and objective as the OPANAL, but covers only Argentine and Brazil. It is thought that ABACC will eventually become a part of OPANAL.

7.3.2 Other possibilities

There is the Conflict Prevention Centre (CPC), which was established by the Charter of Paris for a New Europe, signed in November 1990. The Centre assists the equally newly-created Council of CSCE Ministers in reducing the risk of conflict and gives support to implementation of the CSBMs, as stipulated in the Vienna Document 1990.

Consultative Commissions, as set up for example as a Joint Consultative Group (JCG) for the multilateral CFE Treaty, are another possibility for verification of compliance with a treaty. In theory, the Commissions have no authority whatsoever with respect to the political and legal evaluation of compliance. Formally, they do not make any decisions in this field. Nevertheless, with the antagonism between the US and the USSR retreating into the background, compliance issues lose their explosive political character, and assessment hence becomes more dependent on objective and technical factors.

In 1990 the Treaty on Conventional Armed Forces in Europe (CFE) was adopted, limiting military personnel. Extensive inspections are foreseen in this

treaty as a confidence-building measure between former adversaries and as an opportunity to share sophisticated technologies via East-West cooperative inspection teams.³⁹ The States agreed that manpower, weapon systems, weapons and production facilities would be monitored.

CFE is a multilateral treaty, but it proceeds from East-West logic and thus has naturally followed the bilateral practice in establishing the JCG. The Group, like the other Commissions, has no fact-finding functions nor does it make any judgements concerning compliance; it is a deliberative body. It provides a forum in which parties may meet, discuss questions arising after data collection and analysis, and through which they may clear up ambiguities. Decisions or recommendations are made by consensus, and deliberations are private.

The **Meeting of Contracting Parties** was established by Article IX of the Antarctic Treaty and has been operative since 1961. It is composed of the original signatories and of those States that have acceded to the Treaty and that demonstrate their interest in Antarctica, by conducting substantial scientific research activity in the region, such as the establishment of a scientific station or the dispatch of a scientific expedition.

Only members of the Meeting are entitled to verify compliance with the Treaty. Verification (i.e., aerial observation and on-site inspections) may be carried out unilaterally or jointly, and possibly also through the Meeting, which is, *inter alia*, responsible for recommending measures regarding "the facilitation of the exercise of rights of inspection provided for in Article VII of the Treaty". The meeting convenes at regular intervals and is also the place where consultations take place and where data are exchanged.

The verification mechanism installed by the Antarctic Treaty (i.e., the Meeting of Contracting Parties) is of a highly discriminatory character and runs counter to the principle that all States have equal rights to participate in verification of the agreement to which they are parties.

Existing international organizations may also involve themselves with the verification of arms-control obligations, as provided for in the different existing agreements, or deriving from their more general mandates in the field of international peace and security. Examples are the United Nations, or regional organizations such as the Organization of American States (OAS), the Organization of African Unity (OAU), and the North Atlantic Treaty Organization (NATO), or organizations which have a specific technical or legal mandate, such as the

³⁹ *Sipri Yearbook 1993, World Armaments and Disarmament*, 606 ff.

International Atomic Energy Agency (IAEA) and the International Court of Justice (ICJ), whose authority is usually confined to technical assistance or fact-finding missions. Organizations in the first category may also derive their authority to intervene from their statutes.

Numerous proposals exist to establish organizations dedicated to non-treaty-specific verification or monitoring. Since they are not related to any specific agreement, they can exercise monitoring functions only by gathering data. No such body has yet been established or is likely to be set up in the near future.⁴⁰

7.4 Treaties — proposals

There is the Non-Proliferation Treaty (NPT), regarded as the cornerstone of efforts to prevent the spread of nuclear weapons. It is not global and is not aimed at disarmament but at preventing proliferation.

As its basic system of reporting, NPT requires States to set up a **national** verification system, which reports to a **central documentation centre**, that sends monthly reports to the International Atomic Energy Agency (**international level**). The data are stored in the Safeguards Information System (ISIS), a computerized data bank.

This system is enhanced by containment and surveillance measures, which are usually technical and concentrated on specific nuclear specific issues, for example, surveillance cameras at nuclear installations, and satellites.⁴¹

The Chemical Weapons Convention (CWC) is a historic multilateral agreement, banning all chemical weapons worldwide, imposing a wide spectrum of inspections to verify the ban, outlawing any use of these weapons and imposing a strict ban on all activities to develop new chemical weapons. The CW Organization has been assigned only fact-finding tasks.

The verification system envisaged for the CWC faces two main challenges not previously encountered on such a large scale and with so many variables. First, there is verification of the measures to meet non-production requirement (e.g., closure of production facilities, destruction and conversion activities) and,

⁴⁰ See note 35.

⁴¹ F. Mautner-Markhof, in R. Kokoski and S. Koulik (eds.) *Verification of Conventional Arms Control in Europe, Technological Constraints and Opportunities* (1990), 251-261.

second, there are measures to ensure that there is no violation as a result of non-prohibited activities.

The international verification organization will be made up of three bodies: a conference of States parties, an executive council and a technical secretariat, supported by an international inspectorate and with national provision of information as the basis for verification activities.

The possibility of requesting challenge inspection, applicable to all activities regulated by the CWC, gives the system an element of deterrence and will also increase confidence in the CWC.

The implementation of the Convention at national and international level will require lines of communication between the various components of the verification organization and the national authority of each state party; such a communications system will probably be multi-purpose.

In general, CWC verification focuses specifically on the civilian chemical industry and the particular destruction undertaking; however, limited use of some applied technologies and verification tools will also be relevant for conventional arms-control verification.⁴²

Estimates have been made of the human resources and finances required. The Organization would probably need a total of 603 inspectors (340 would supervise destruction operations and 138 would carry out challenge inspections) and a support staff of 400, making a total of 1,000. Total costs would be around \$160 million.

The Open Skies Treaty, negotiated from 1989 onward, would allow flights by unarmed reconnaissance aircraft over the territories of states. Potentially, the treaty improves openness and transparency, facilitates the monitoring of compliance with existing or future arms-control agreements and strengthens the capacity for conflict prevention and crisis management within the framework of the CSCE. It is a possible method of verification.

The United Nations Register of Conventional Arms, if complied with universally, could develop into a far-reaching international control mechanism which could create unprecedented transparency, both in the international trade in arms and in the national production of arms. It is a framework for dialogue in a specific area of military activity and a basis for future verifiable limitations and reductions.

⁴² T. Stock and J. Matousek, in R. Kokoski and S. Koulik (eds.) *op. cit.*, 264 - 272.

7.5 Conclusion

Verification procedures are included in disarmament treaties for the very reason that they should not be included in other treaties, since they make the system inflexible. States do not want disarmament verification systems to change.

Procedures for verification of disarmament are treaty-specific. They are extremely expensive when equipped with an institution for verification, and not very effective without one. Moreover verification works only when the scope of the treaty is limited in time and objectives. Cost-effectiveness and efficiency are only attainable when there is a limited group of like-minded and similarly resourced States, as, for example, in Western Europe. In universal or multilateral contexts, where the discrepancies in means, both technical and financial, are great, costs are often considered prohibitive. Indeed, those States with the strongest financial and technical resources end up paying for a collective effort, with no notable or concrete returns. The proposal for a UN-operated International Monitoring Agency is an example of this kind.

The low level of institutionalization for multilateral treaties is therefore not surprising. Indeed, the ACA and to a greater extent OPANAL and the future CW organization appear to be real exceptions. Furthermore, even if institutionalized, their functions and the methods at their disposal remain limited to fact-finding. On-site challenge inspections remain the solution to everything both in the CWC framework as in the CFE context. The legal/political evaluation of facts, let alone responses, has not yet been considered in negotiations despite increasing recognition of its importance. Nonetheless, States are increasingly recognizing the importance of international consultation on compliance and feel the need to institutionalize this process.

CHAPTER 8

ENVIRONMENT TREATIES

Supervision on the implementation of international environmental regulations can be delegated to a specific State, to each State party⁴³ or to a special international body.⁴⁴

⁴³ Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal, adopted in Basel on 22 March 1989.

⁴⁴ 1980 Canberra Convention on Conservation of Antarctic Marine Living Resources (CCAMLR).

An example of delegation of supervision to a specific state is when a ship voluntarily enters a port or off-shore installation the coastal state can investigate.⁴⁵

Most environmental treaties require States to submit periodic reports on the implementing measures that they have taken. The extent of this obligation varies, but it usually covers at least the measures taken by parties towards **implementing their obligations**.⁴⁶ Information must also usually be provided to enable assessment of **how effectively the treaty is operating**. The 1974 Paris Convention for the Prevention of Marine Pollution from Land-based Sources, for example, calls on the parties to report on levels of marine pollution and on the effectiveness of measures adopted to reduce it. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes requires an annual report on all aspects of transboundary trade and disposal of such substances, and on "such matters as the conference of the Parties shall deem relevant".⁴⁷ Similarly, Article 8 of the 1973 Convention on the International Trade in Endangered Species (CITES) requires the parties to maintain records of trade in listed species and to report on the number and type of permits granted. This information must be made available to the public. In some cases, reporting requirements are designed to **monitor how well the parties are enforcing a treaty**. Thus, the 1946 International Convention for the Regulation of Whaling and the 1991 Protocol to the Antarctic Treaty on Environmental Protection oblige the parties to submit reports by national inspectors concerning infractions, while the 1973 International Convention for the Prevention of Pollution by Ships (MARPOL) calls for reports from national authorities on action taken to deal with reported violations and on incidents involving harmful substances.

Among international supervisory bodies is the Organization of African Unity, responsible for the African Convention on the Conservation of Nature and Natural Resources. The CITES requires States to file reports annually to its Secretariat, like the Montreal Protocol on the Ozone Layer, which also has its own Secretariat.⁴⁸

The information gathered is meant to enable the parties to review and evaluate the impact of a treaty. When the information must be made public, NGOs and other interested groups are also able to monitor progress. The obvious

⁴⁵ Article 218 of the Law of the Sea Convention.

⁴⁶ See also: A. Kiss and D. Shelton, *International Environmental Law*, 1991, 98-101.

⁴⁷ Article 13.

⁴⁸ A. Gallagher, The "New" Montreal Protocol and the Future of International Law for Protection of the Global Environment, in *Houston Journal of International Law*, Volume 14, Winter 1992, No. 2, 337.

weakness is that much will depend on the diligence and accuracy of the reporting authorities. Therefore use is also made of fact-finding methods, research and inspection.⁴⁹

CHAPTER 9

OVERVIEW, CHARACTERISTICS AND A POSSIBLE SYSTEM FOR INTERNATIONAL HUMANITARIAN LAW

This chapter is divided in three parts. The first part discusses the concept of a reporting system: what it is, how it functions, its effectiveness, and what it requires in terms of human and financial resources within the framework of international organizations other than the ICRC.

The second part evaluates the characteristics that influence the success or failure of a reporting system. The third part puts forward a possible reporting system, on national measures of implementation of international humanitarian law which already have to be taken in peacetime.

9.1 The concept of a reporting system

Unfortunately, humanitarian agreements tend to be utilized as tools of domestic political rhetoric, allowing States to “reap the public image benefits of signature without bearing the cost of implementation”. Even if an intention to comply is present at the time of signature, this is not of itself sufficient to guarantee effective implementation. First, officials or agencies that negotiate agreements are not always those authorized to ratify or otherwise implement them.⁵⁰ Second, the accepting government may fall from power and its successor may be unwilling or unable to honour its commitments. Third, a government’s administrative capacity may be insufficient to permit discharge of its obligations.⁵¹ One of the goals of a reporting system would be to overcome this problem and end, or at least limit, non-implementation.

⁴⁹ P.W. Birnie, A.E. Boyle, *International Law and the Environment*, 1992, 166-167.

⁵⁰ This problem is partly overcome in the OECD system, where policy decisions are taken at ministerial level.

⁵¹ See note 48.

A reporting system is part of an implementation system. It supplies information from each State on the operation and implementation of a treaty by that State, it monitors at national level. One way of supplying information is by a self-evaluating report. Self-evaluating reports are assessments of a State's performance by that State, not by other States or by independent agents, such as special rapporteurs or non-governmental organizations, through these may later play a role in verifying the data received.

The information thus obtained may be submitted to an international institution having a supervisory role.

The key tasks of an international supervisory institution are those of gathering information and data by receiving, for example, self-evaluating State reports, of facilitating independent monitoring and inspection, and acting as a forum for reviewing the performance of States or the negotiation of further measures and regulations. Such institutions may thus acquire semi-official law-enforcement and law-making functions. Law-enforcement consists in requiring States to be accountable to other Member States, i.e., imposing a form of collective or communal supervision. To the extent that supervisory bodies are open to participation by other interested parties or NGOs with observer status, this accountability may extend to a wider public.

Supervision of this kind also entails the negotiation and drafting of detailed rules, standards or practices, usually as a means of giving effect to the more general provisions of treaties. Not only does this form of law-making or international regulation facilitate treaty implementation, it also gives treaties a dynamic character and enables the parties to respond to new problems or priorities.

Thus, the combination of regulatory and supervisory functions in the hands of international institutions is of importance in making international agreements operate more effectively. The absence of any provision for institutional supervision or regulation is, by contrast, often a sign that the treaty in question is bound to remain ineffective.

Proper supervision of the operation and implementation of treaty regimes depends on adequate information, much of it supplied by self-evaluating State reports. But international institutions are not confined to a passive role as recipients of information: in many cases they are competent to conduct fact-finding or research. The most assertive method of information-gathering and supervision allows international institutions to undertake inspections (in-country or on-site) to verify compliance with international agreements and standards.⁵² Some sys-

⁵² See note 48.

tems have a follow-up procedure, e.g., technical assistance, field missions or field representatives, or there are subsidiary procedures to correlate the information received, for example, inter-state and/or individual complaints procedures, enquiry procedures, also reports from various sources and on-site missions.

9.2 Evaluation

The thorough study of various reporting systems highlights certain factors that influence the success of a system. One factor alone is usually not decisive, but combinations of factors can determine the effectiveness of a system. On the basis of these factors, an outline of a possible reporting system on national measures of implementation of international humanitarian law is put forward.

9.2.1 Influencing factors

The sensitivity of the subject

The more sensitive an issue, the less likely States are to report on it. For example, torture and racial discrimination are sensitive issues: no State likes to admit that these occur on its territory. Disarmament and humanitarian subjects are sensitive because they are linked to the national security of a State, always a sensitive issue. Cultural identity used not to be sensitive, but in recent years States and peoples react violently on this subject. Children are an example of an issue that is not sensitive. Every State is eager to report on all it does to help children.

The economic value of the subject

A subject that may increase prosperity is a positive incentive for reporting. Good examples are the OECD and the WIPO, where States may benefit economically when they share information or adhere to a Convention.

The specificity of the subject

This aspect is closely linked to the national level on which the reports are produced. The more specific the reporting requirements are the more likely it is that meaningful reports will be produced. For example the ILO, OECD, UNESCO, Disarmament and Environment Conventions deal with very specific issues, but the topics of the CRC, HRC, CESCRC and WIPO tend to be more general in scope. When a Convention is broad and general, difficulties in reporting can be reduced by restricting the reporting obligation to very specific subjects, with very specific guidelines.

The popularity of the subject in the media

Media coverage is usually a positive incentive, but linked with a sensitive subject it can become a deterrent to reporting by States.

Secretarial support

This factor is crucial for the functioning of a reporting system. Without a well-staffed secretariat a reporting system is inoperable, since not only the organization of the reporting system, but also its quality and effectiveness, depend on the secretariat. It could be argued that the role of a secretariat is more crucial than that of a supervisory body.

The importance of adequate secretarial support is underlined by the following: the chairpersons of the human-rights treaty bodies have noted that there is a “close link between adequate secretariat resources and the effective functioning of the treaty body system”.⁵³

The flexibility of the reporting procedure

Reporting systems usually function for decades. As situations and concepts change, the system should be, to a certain extent, adaptable to these changes to avoid becoming obsolete. Therefore it is better to leave the procedural aspects of a system out of a Convention as much as possible, in order to keep the procedure flexible, adaptable and up to date.

A permanent body to which to report

The Convention on the Elimination of the Crime of Apartheid is a good example why an *ad hoc* body does not work. During one of the most important eras in its history, the elections in South Africa, it was not possible to convene the body because it had no members. Accordingly, the establishment of a supervisory body with a permanent character is recommended to ensure continuity.

The quality and efficient functioning of a supervisory body

States are much more keen to report to a body composed of important people, since this lends weight to the body's conclusions concerning a State. High-ranking people also have personal contacts that may persuade a State to submit a report. The Human Rights Committee is a good example: it is considered as a body of high standing that develops human-rights law, and States are willing to report to it.

⁵³ A/47/628, annex, para. 20, in E/CN.4/1994/101, pp. 2, 3.

The degree of institutionalization of an international organization depends largely on the existence and/or diversity of its inter-state and/or integrated bodies, which are distinguished by their composition. An inter-state body is composed of representatives of Member States, while an integrated body is made up of independent experts having no obedience to a particular Member State.⁵⁴

Experts should be good, discreet, professional and well informed, and their judgements should be consistent. For them to be well informed, they must have access to information from a variety of sources or be able to initiate information. This heightens the standing of the body and makes States take their obligations more seriously. When bodies take contradictory decisions or appear to be prejudiced, it has an adverse effect on the submission of reports. Political tendencies should be at all times avoided, since they act to the detriment of the system.

Follow-up

The existence of any form of follow-up, either to the state report or to the conclusions from the supervisory body, is a major factor in the effective functioning of the reporting system.

The reaction to a state report can be a report, an opinion or a judgement. These may be public or confidential. The strength of the conclusion can benefit a State, which will have clear guidelines, and it can be used by others to facilitate follow-up.

It is best if the reporting system is combined with other systems of preventive monitoring and ideally also with a system providing a means of reacting to violations at international level. Examples of preventive monitoring are the initiation of inquiries or requests to a body or a person to investigate a situation or a country. Examples of systems that react to violations are individual or inter-state⁵⁵ complaints procedures, and investigations by a body or a person, e.g., a fact-finding commission. These systems may be either confidential or public. If the latter, the resulting publicity may constitute additional follow-up.

The availability of technical assistance programmes is also a positive incentive for a State to submit a report, especially to States that are not otherwise able to produce a report or have difficulties with regard to the implementation of a convention.

⁵⁴ This point is also put forward by F. Hampson, "Monitoring and Enforcement Mechanisms in the Human Rights Field", in *Expert Meeting on Certain Weapon Systems and on Implementation Mechanisms in International Law, Geneva 30 May - 1 June 1994*, ICRC Report, July 1994, p. 128. But she warns that certain States are believed to attempt to influence "their" independent experts or put only senior government officials forward as candidates.

⁵⁵ States do not usually complain of the non-compliance of another State.

Admission to an international instrument

The OECD, the WIPO and the Council of Europe use the mechanism of admission, and so far it appears very effective. States are forced to act on the recommendations of the body if they wish to reach a member status.

The existence of a national monitoring body

At national level there is one crucial factor underlying all the problems of the reporting systems. This is the existence or absence of a national reporting/monitoring structure. This topic will be further discussed in section 9.3.2.

Certain factors, such as the sensitivity and the economic value of a subject, cannot be influenced. On the other hand, **the secretarial support, the specificity of the reports demanded, and the follow-up** can be influenced and are crucial for the success of a reporting system. These aspects should therefore receive most attention when considering a new reporting system.

9.3 Possible focused reporting system on national measures of implementation of international humanitarian law

In its “Final Declaration” adopted 1 September 1993, the International Conference for the Protection of War Victims (Geneva, 30 August to 1 September 1993) referred to an intergovernmental group of experts to be convened by the Swiss Government, with the task of studying, *inter alia*, “**practical means of promoting full respect for and compliance with [international humanitarian law], and to prepare a report for submission to the International Conference of the Red Cross and Red Crescent**”.

The Meeting’s main topic — respect for international humanitarian law (IHL) — may be divided into **three aspects**:

- (1) **universal applicability** of the pertinent international instruments;
 - (2) **prevention** of violations of IHL;
- and
- (3) **observation** of IHL and **repression** of violations.

9.3.1 At the international level

In a reporting system for the ICRC, States should be required to report on:

(a) implementation

- of national measures for the repression/punishment of violations,
- of an internal monitoring system on the observation of IHL by armed forces,
- of a national interministerial committee,
- of cooperation between States for
 - regional seminars organized by the ICRC, and
 - communication of data to a central body (ICRC);

(b) dissemination

- education of armed forces,
- coordination of efforts to spread the knowledge of IHL (e.g., in schools) by, for example, the Ministry of Education.

The information required must be very specific, for example, translations of the Conventions, national laws, then military manuals and, later, updating of national laws. The reports are thus very specific and constitute a focused reporting system, to ensure effectiveness. It has become apparent that a widespread general approach is much less effective than small-scale intensive approaches. This point will be discussed in more detail below.

A feature of the system could be a reporting cycle of four years, to coincide with that of the International Conferences of the Red Cross and Red Crescent. The ICRC would then submit a report to each International Conference on the results of the most recent reporting cycle.

A secretariat is essential for requesting reports, organizing the meetings and distributing the papers, but also for carrying out research into reporting States (e.g., finding earlier reports by these States for other bodies such as the UN, UNESCO, ILO, etc.) and making specific inquiries. It must also be possible for the secretariat to assist States in producing reports. The staff of the secretariat will have to include specialists⁵⁶ on humanitarian law, on reporting/monitoring/technical assistance and on advisory services. In existing reporting systems, the expertise within the secretariat is such as to justify reports being submitted, not to a supervisory body, but only to the secretariat. Such a procedure would

⁵⁶ E/CN.4/1994/101, p. 2.

eliminate the judgemental factor almost completely, and the main focus would be on cooperation between the secretariat and the State — an ideal situation for the ICRC, since any hint of criticism of a State can imperil operations in the field and may even endanger the lives of personnel.

The incorporation of such a secretariat within the ICRC would be relatively simple. The secretariat could continue the work already performed by the ICRC, but in a more detailed and specialized way.

Reporting countries could be divided into categories, possibly according to the existing ICRC practice of zoning, whereby a small department of 3 professionals deals with the reports from a single zone. This practice permits specialization on a zone, and lawyers can team up with operational staff to exchange information to their mutual benefit. For example, if there are 186 reporting States, then the six ICRC operational zones would each include 31 States, i.e., 8 States per year would send reports.

An international supervisory body could be established. It should consist of outstanding scholars, members of the armed forces, diplomats and possibly social workers or field delegates/development experts, to get the broadest representation of specializations and interests. The experts could be independent or state representatives. With state representatives, the system is less costly; and another advantage might be that States would feel less attacked by observations coming from state representatives rather than from independent experts. The body itself must be free to decide whether its conclusions will be published or not. It should meet once or twice a year, depending on the volume of reports received. Intervals between meetings should be flexible, and for the body itself to decide.

The creation of a supervisory body has some advantages. One of the weakest points of a reporting system is that States cannot be forced to submit a report. Several psychologically important factors can offset this weakness: States may be pressured into submitting a report by media attention, by a prestigious body, or by intensive follow-up of a report or the request for a report. These factors all influence each other, but the first two points, media attention and the prestige of a body, are closely linked. When there is no supervisory body, the follow-up and the attention of secretariat staff to States must be intensified.

A documentation centre,⁵⁷ where crucial documents can be stored and are accessible to the secretariat, and computerized retrieval,⁵⁸ are essential to the proper functioning of the system.

⁵⁷ See note 56.

⁵⁸ See note 56; the ILO system is computerized; revision is under consideration.

The review of reports could result in advice on IHL, technical assistance or other positive incentives being offered to States. The body would be able to advise on accession to international fact-finding commission/inquiry procedure and thereby help that procedure to become more effective.

The reporting system does not have to function indefinitely: reassessment after two to three four years cycles will show whether it meets expectations. That way the system is kept flexible.

9.3.2 At the national level

The fundamental problem of a reporting system is not at international level, but at national level. The crucial nature of this factor cannot be fully appreciated unless the nature of a reporting system is completely understood.

A reporting system is a mechanism whereby States assess the level of implementation of international treaties in, for example, their own national legislation. The reports are not primarily a method of control/verification, but a means of verifying the functioning of state systems of accountability and control, ensuring by independent measurements and inspections that the state is meeting its obligations.

It is vital for a reporting system at international level to be supplied with reports produced at national level. But in order to produce such reports, a State must possess a reporting system at national level, provided with data by specialists within the country who know about national legislation and legal practice, government policy, the armed forces and national security. Unless all this knowledge is used for preparation of an international report, the report is unlikely be satisfactory.

Another aspect is more directly linked to the effectiveness of prevention. The best deterrent to violators is effective prosecution,⁵⁹ which requires an effective legal mechanism. The absence or the shortcomings of a legal system can be noted in reports on such matters. These reports, followed up by a technical assistance programme, could go a long way towards making prevention more effective.

There is always the risk that recommendations made by the international supervisory body are not followed up at national level, because no national entity has been mandated to implement the recommendations. The failure by States to follow up the general comments and concluding observations of the experts of international organizations is the reason why most reporting systems are not more effective.

⁵⁹ See note 54.

This problem has been recognized by a number of international organizations. For example, the ILO uses the employers' and workers' associations at national level to check government reports and to supply commentaries. Thus there is a means of determining whether the recommendations of the international body are put into practice. An advantage of this system is that the non-government party or parties know(s) the situation within the country. For the ICRC, the National Societies of the Red Cross and the Red Crescent may fulfil this role by urging States to submit reports, by monitoring their contents and by verifying implementation of the Conventions.

A similar system is developing for the human rights treaties, with specialized NGOs taking over several tasks of the secretariat, supplying extra information on the government reports and using the concluding observations to pressure governments to follow up the recommendations.

The offer of technical assistance can be an important incentive to the reporting States. The aim of assistance should be to set up within the government a system, staffed by local personnel from different backgrounds, to prepare national reports describing the situation in their country.

ICRC delegates in the field would be able to support the National Societies through bilateral steps with governments or by explaining the reporting system.

CONCLUSION

A reporting system is essential if any progress is to be made in the implementation of international humanitarian law and in preventing violations.

The system can be operated by an independent body of distinguished experts from widely different backgrounds. It must be supported by an adequate secretariat that can develop initiatives when it deems it to be necessary.

At national level, there should be a system for monitoring the situation within a State and for preparing reports to national and international bodies.

A reporting procedure alone however is not sufficient. The Secretariat should be enabled to help a State to derive the fullest benefit from the Conventions it has signed. Technical assistance should be given to those States that ask for it, or that are considered to be in need of assistance by the international body. In addition, the Secretariat should be capable of assessing needs and carrying out missions in the field in order to help States. The National Societies should be integrated into the system of monitoring implementation at national level.

In brief an effective reporting system should be supervised by an independent international body, but it is possible to operate it with a technical secretariat. Incentives to comply with reporting obligations should be provided by assistance programmes at international level, and by encouraging States to set up national monitoring machinery. Adequate human and financial resources are essential to the effectiveness of a reporting system.

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AN OVERVIEW OF THE REPORTING SYSTEMS

TABLE I

<i>Organisation</i>	<i>Conventions</i>	<i>Personnel of the Secretariat</i>	<i>Body Members</i>	<i>Field offices also working on implementation</i>	<i>Percentage of submitted reports</i>	<i>Budget (per year)</i>
United Nations	6 Conventions 6 Secretaries	10 Professionals 74 Experts (part time)	Independent	Yes	10 - 60%	\$15,000,000
UNESCO	2 Conventions 10 Recommendations	4 Professional 2 Secretaries	----	No	some 10%	+/- \$ 800,000 (total budget is \$4,965,000: 6)
ILO	181 Recommendations 174 Conventions	40-50 Professionals 10-15 Secretaries 14-15 Field Officers	Independent: 20 Experts (part time) State Representatives	Yes	some 70%	(no information has been supplied by the ILO)
WIPO	2 Major Conventions	25 Professionals 11 Secretaries	----	Yes	some 70%	min. Sfr. 2,000,000 (probably more than double)
OECD	4 Major Reporting Obligations 25 Working Groups	829 Professionals 662 Other Personnel	State Representatives	No	some 100%	FFR. 1,453,006,097 (1992)
Disarmament	2 Conventions	50/60 Professionals(?)	State Representatives	No	100%	\$ 88,000,000 - 138,000,000