

LEGAL ASPECTS OF AERIAL OVERFLIGHTS

Any aerial activity contemplated as part of a verification regime would have to be established within a cooperative framework, in accordance with national air traffic rules and procedures, and institutionalized in order to provide an effective and coordinated approach to airborne surveillance. Under international law, the ultimate responsibility for all aerial overflights resides with the national government over whose territory the flight is taking place. The national authoritative body governing air traffic may authorize, limit or ban all and any flights within the navigable airspace of that country, although provision for aerial overflights would presume every effort at cooperation with the international body conducting the flights.

Three general principles apply to the conduct of overflights: treaty/operational considerations (e.g. timings including duration), the safety aspects of an overflight, and the intrusiveness (e.g. sensor suites and operation parameters) of a particular flight. In relation to an aerial inspection regime and the BTWC, only safety considerations would likely be considered as grounds to constrain the overflight. The operational considerations of flights and the level of intrusiveness allowed will have been established beforehand through negotiation. Intrusiveness issues would be dependent on the types and capabilities of sensors permitted within the operational framework of the aerial inspection regime. In the context of this paper, the use of commercially available imaging sensors with moderate to high spatial resolution would not constitute an overly intrusive regime, certainly not any more intrusive than that required for on-site inspections.

The issue of data sharing or data retention may have legal implications in that the data collected by the remote sensors must be controlled in a fashion to exemplify a supporting role to on-site inspections. Control of the data products acquired as a result of aerial overflights must be addressed in order to protect the informational aspects supplied as a result of overhead surveillance. One possibility may be a central databank