

Some observers have called for consideration to be given to provisional entry into force of the CTBT, both for its own sake and to allow the verification system to become fully functional and useable. From a verification perspective it would be preferable for the verification system to be used in an official, legally binding way. Provisional entry into force would, however, relieve the pressure on states which have not signed and/or ratified.

In a sense a formal move towards provisional implementation is unnecessary as significant elements of the regime are already being provisionally implemented. The nascent verification body is in place, the monitoring system is largely functional and states are already receiving data from the system. States can use such information unilaterally or collectively to help determine that a nuclear test has taken place.

Compliance mechanisms

The CTBT is unusual among multilateral arms control regimes in that a compliance issue may only be triggered by a state party (or parties), not by the verification organization itself.⁹ In comparison, the International Atomic Energy Agency (IAEA) and the Organisation for the Prohibition of Chemical Weapons (OPCW) may, on the basis of the verification information they obtain, raise concerns about a state party's compliance.

There is no evidence that any signatory state has violated the CTBT, so a non-compliance case has yet to arise.¹⁰ Until the treaty enters into force it would not be possible in any case to trigger the formal consultation, clarification and compliance mechanisms provided using the Executive Council. Yet even without entry into force, there is nothing to prevent any state from seeking bilateral consultations with another state or states about a compliance question or requesting a meeting of the PrepCom if it believes that a nuclear test has been carried out by a state signatory. The PrepCom could decide to become involved in a compliance issue if enough signatories so wished. If that did not work, any state could apprise the UN Security Council of the matter. So strong is the taboo against nuclear testing that entry into force of the treaty—while highly desirable—may not be absolutely necessary for the verification and compliance system to function virtually as planned.

The Nuclear Non-Proliferation Treaty (NPT)

Unlike the CTBT, which is to be verified by a purpose-built verification organization, compliance with the 1968 Nuclear Non-Proliferation Treaty is largely verified by an organization—the IAEA—which was founded before the NPT was concluded. Moreover, the IAEA is not involved in verifying compliance with all of the NPT's obligations: notably the disarmament obligations of the nuclear weapon states (NWS) parties. Periodic NPT review conferences, and latterly annual preparatory meetings for such conferences, are the sole forum for collective monitoring of compliance by all parties with all of their obligations under the treaty.

⁹ Article IV, Section C of the treaty on consultation and clarification lays out the process, stressing that states must attempt to clarify and resolve compliance issues among themselves first before seeking the assistance of the organization.

¹⁰ States that sign a treaty are expected not to undermine its object and purpose—in this case that surely means refraining from conducting a nuclear test.