

BWC Meeting of Experts, Geneva, 12-16 August 2013

The BWC and compliance: Reading across from nuclear

Wyn Q. Bowen

Centre for Science and Security Studies, King's College London

wyn.bowen@kcl.ac.uk

Before I began writing my notes for this session, I had assumed a focus on the Nuclear Non-Proliferation Treaty (NPT) and issues related to compliance with both the Treaty and associated Safeguards Agreements between individual states parties of the NPT and the International Atomic Energy Agency (IAEA), as well as compliance with NPT Article VI on disarmament.

But after reading Filippa's insightful paper on compliance and the BWC it quickly became apparent that I might have more useful things to say on other aspects of the nuclear agenda related to issues of governance and compliance.

Indeed, as we all know, NPT compliance issues related to non-proliferation and disarmament are already very well worn paths.

So, I have opted to focus on issues related to two things.

First, the evolving 'nuclear security' agenda narrowly defined – i.e. international efforts to prevent nuclear and radiological terrorism --because I believe there are useful links between that agenda and BWC compliance.

Second, I want to address industry compliance both in the area of nuclear security, but also regarding trade controls designed to prevent the proliferation of strategic technologies to places of concern.

Again, I believe there are useful approaches here that are relevant to BWC compliance and industry.

Information provision, communication and compliance

From my perspective all of the points made in the policy brief on information provision, communication and compliance chime closely with the challenges currently being confronted in the context of international efforts to prevent nuclear and radiological terrorism, or 'nuclear security' as it is generally known.

As we all know, 'nuclear security' narrowly defined is primarily a state responsibility and, while the International Atomic Energy Agency (IAEA) is the central international organisation in this area, it does not have a legal mandate to police national provisions for nuclear security, or the compliance of signatories with the two formal international instruments in this area – the Convention on the Physical Protection of

Nuclear Materials (CPPNM) and its 2005 amendment, and the International Convention on the Suppression of Acts of Nuclear Terrorism (ICSANT).

Similar to the BWC, then, there exists an institutional deficit challenge with regard to how to assess the compliance of states to existing commitments be these formal or more informal in nature.

The voluntary Nuclear Security Summit (NSS) process has of course made an important contribution in the nuclear security field in terms of keeping tabs on the progress of ratifications of the key international instruments and other tangible goals such as securing vulnerable fissile material.

Indeed, we may want to consider the NSS process as an example of the type of voluntary and ‘dedicated forum’ that Filippa is suggesting in the policy brief.

Clearly, the NSS process has its limitations. For example, there is no requirement on participating states to provide national reports on what they’ve done in terms of nuclear security provision, although participants are strongly encouraged to deliver ‘gift baskets’ of national commitments be these internally or externally focused.

Moreover, the NSS process is not likely to evolve beyond the 4th summit to be held by President Obama in 2016, although something will need to take its place such as a Foreign Ministers level meeting linked to a periodical IAEA conference, similar to the July event held this year in Vienna.

The general lack of political support internationally for the negotiation of a new, comprehensive and verifiable legal instrument in the field of nuclear security, and an associated means of verification, has meant that much attention is being given to how to enhance nuclear security in the absence of such an instrument.

Importantly, the Nuclear Threat Initiative (NTI) has been pushing the concept of an International Assurances mechanism and this looks set to feature at the 2014 summit meeting in The Hague. NTI defines “international assurances” as:

Activities undertaken, information shared, or measures implemented voluntarily by a state or other stakeholders that provide confidence to others (other governments, a designated international organization, the public, etc.) of the effectiveness of nuclear security within a given state. International assurances can be provided while protecting sensitive information about materials and sites.

The NTI notes that ‘there are a variety of ways in which a state can voluntarily provide confidence to others’, and ‘international assurances could vary in the number of parties that might participate, the number of possible recipients of the assurance, as well as how much assurance is ultimately provided’.

For instance, assurances could involve just two states bilaterally or a state could make assurances to a much wider group of states or the entire international community.

Other possible examples of international assurances highlighted by NTI include: best practice exchanges; peer reviews; workshops; trainings; and table-top exercises.ⁱ

Of course, the IAEA already engages in peer reviews relevant to nuclear security through its International Physical Protection Advisory Service (IPPAS).

IPPAS missions are important means through which the IAEA can assist states on request to comply to the requirements of international instruments, standards and guidance related to nuclear security, notably with regard to physical protection (INFCIRC/225/Rev.4 - The Physical Protection of Nuclear Material and Nuclear Facilities).

This is done by IAEA teams performing nation-wide and/or facility specific reviews. Based on these reviews and in-line with recognized best practices, IPPAS missions will acknowledge good practices present, and make recommendations and suggestions for improvements at the state and operational levels.

Follow-up activities are undertaken by the host state and the IAEA with follow-up IPPAS missions following later.

Reports produced through the IPPAS process are highly confidential documents that are only shared with the State in question.ⁱⁱ

In terms of compliance, requesting an IPPAS mission in and of itself sends a clear message of intent and a desire to comply with international best practices and standards.

Moreover, the Dutch government decided in 2012 to make public the results of IPPAS reviews of The Netherlands. In doing so, the Dutch not only demonstrated its nuclear security credentials ahead of hosting the 2014 NSS, but much more importantly it demonstrated how publishing the outcome of IPPAS reviews, and the results of follow on actions, can serve as a credible confidence building measure to others that The Netherlands is living up to its formal and informal commitments in this area.

Such action has set a very useful precedent in terms of providing information and communicating it to others for the purpose of transparency and demonstrating compliance.

Something to think about perhaps in the context of BWC compliance.

Industry and private sector compliance

On industry compliance, I wanted to highlight two initiatives that have developed in the nuclear area directly related to seeking, or enabling, industry buy-in, or compliance, to relevant agendas.

Nuclear Industry Summit

The first is the Nuclear Industry Summit, which has been set up in parallel to the NSS process, the last of which was held in Seoul in March 2012.

The industry summit recognized the 'role of nuclear industry, including the private sector, in nuclear security'.

Participants included 'representatives from 118 entities in 36 states with significant experience in operation of nuclear installations, production and proper management of nuclear material, and international nuclear cooperation and trade.'

All participants demonstrated a willingness to 'work together and separately in their areas of expertise and in a cooperative manner with respective States' authorities towards strengthening nuclear security and safety.'

Issues considered during the Nuclear Industry Summit and included in the summit's Joint Statement:

- Minimization of Civilian Use of Highly Enriched Uranium (HEU)
- Securing Sensitive Information
- Enhancing security culture by continuing to raise awareness among employees to the security threats and foster an open environment for reporting security concerns
- Supporting the development of international security recommendations by IAEA
- Continuing to focus on and strengthen security measures against increasing cyber threats
- Promoting the exchange of nuclear security information and best practices, as appropriate, concerning security of sensitive nuclear information to strengthen nuclear security.
- Promoting global cooperative dialogues on the industry level, including participation in international conference and forum with a view to exchange information on and discussion of issues related to reinforcing security and safety of nuclear facilities
- Is there scope for similar events to be organized in the BW area?
- Recognising of course that the bio-industry is more widely flung and less straightforward to pin down in comparison to the nuclear area. But it is just a thought.ⁱⁱⁱ

Project Alpha

The second initiative related to industry compliance that I wanted to mention is Project Alpha.

Project Alpha is a King's College London-based, UK government-sponsored initiative established in 2011 to support dual-use companies in implementing export controls derived from various UNSCRs and other things, and in countering the illicit trade that maintains illicit nuclear and missile programmes.

As we know the private sector has an important role to play in countering proliferation whether this is in the biological, nuclear or other fields.

While governments can adopt export controls and sanctions into law, it is individual firms that must exercise vigilance to avoid illicit trade on a daily basis.

In this respect Project Alpha has two main strands:

1. To encourage what we call 'anti-proliferation' practices through supply chains
i.e. working toward the goal of all firms having in place a proliferation resistant export compliance system; and
2. To assist exporters in implementing best-practice compliance systems which meet legal requirements and counter the risk of illicit trade.

Project Alpha promotes a partnership model with the private sector. While the Project's information and guidance are made available to all, individual firms are encouraged to publically-embrace best-practice compliance standards by becoming a 'Partner Against Proliferation'.

This entails a commitment to:

- Ensuring companies' compliance systems are robust, proportionate and effective.
- Enabling customers or suppliers to build confidence in a company's compliance system.
- Demonstrating to stakeholders that a company is socially responsible.

The partner's initiative is designed to be a peer-based network governed by consensus. The initiative will be overseen by a "Partner's Board", membership of which will be determined based upon nomination and vote (with one vote being allocated to each participating institution).

Presently there is no entry criteria to joining the initiative other than a willingness to work towards implementation of 'good practice guidelines' on export compliance (see below).

- 1.0 Implement internal systems to ensure due-diligence checks are carried out on potential customers and business partners and on the goods, software and technology that they wish to acquire, utilising public information such as early warning lists, red-flag checklists and questionnaires provided by the United Nations, states and other parties with an interest in supporting the multilateral non-proliferation effort, and to consult with the relevant government authorities as necessary;
- 2.0 Monitor, collate and vet enquiries within the scope of due-diligence, relating to the acquisition of proliferation sensitive goods, software and technology;
- 3.0 Consult government export control authorities before having any dealings with entities identified as being of proliferation concern either from public sources, from corporate monitoring systems or from contact with relevant competent authorities in states themselves;
- 4.0 Implement best efforts to share information about illicit attempts to procure items for Weapons of Mass Destruction programmes with security and other relevant agencies in the state where they are established and with business partners and others in instances where the state judges that broader publicity would be appropriate;
- 5.0 Promote the adoption of due-diligence and information sharing within the supply chain and with other business partners within the boundaries of legitimate protection of business and company information;
- 6.0 Incorporate non-proliferation measures and export control compliance into existing corporate social responsibility statements;
- 7.0 Encourage relevant industry-wide trade and professional bodies to recognise the importance of supporting and encouraging the non-proliferation effort and the measures set out herein; and
- 8.0 Foster an open and transparent relationship with appropriate government and regulatory authorities.
- 9.0 Train all relevant staff against a trade compliance competence framework

Industry and private sector engagement is obviously an important part of the BWC compliance agenda given concerns over bio-security as these have evolved since 9/11.

The Nuclear Industry Summit in parallel with the NSS, and Project Alpha, are both examples from the nuclear field relevant to thinking about industry and private sector engagement and BWC compliance. Recognising of course that the bio-industry is more diffuse and complex than in the nuclear sector.

These might be things to address further in the discussion, along with the potential lessons and read across from the nuclear security area in the context of information provision, communication and compliance.^{iv}

Thank you for listening.

Notes

ⁱ Nuclear Threat Initiative, DISCUSSION GUIDE: INTERNATIONAL ASSURANCES PLENARY SESSION, Wilton Park conference on [The 2014 Nuclear Security Summit: challenges and opportunities](#), The Hague, 27 February –1 March 2013.

ⁱⁱ Mark S. Soo Hoo, IAEA-ACTIVITIES FOR PHYSICAL PROTECTION: ROLE AND IMPORTANCE OF IPPAS MISSIONS.

ⁱⁱⁱ Joint Statement of the 2012 Seoul Nuclear Industry Summit, 23 March 2012.

^{iv} Project Alpha,

<http://www.kcl.ac.uk/sspp/departments/warstudies/research/groups/csss/alpha/hub.aspx>