

Building confidence in nuclear abolition: Individual responsibility and societal verification¹

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Societal verification is eminent important for an efficient functioning of the Nuclear-Weapons-Convention (NWC). I will give you an overlook over the history: prominent cases, regulation examples and the drafted rules in the NWC.

Social verification has been discussed for decades under different names, like 'citizens' reporting', 'inspection by the people' and 'social monitoring'. Although there is no agreed legal definition, social verification connotes the involvement of civil society in monitoring national compliance with, and overall implementation of, international treaties or agreements. One important element is citizens' reporting of violations or attempted violations of agreements by their own government or others in their own country.

Whistleblowing is a specific type of citizens' reporting. It relies on violations or attempted violations of an international accord being detected directly by employees, such as scientists and technologists, working in relevant industries. Compared with normal citizens, employees are in a special situation because they owe their employer a certain loyalty and, by law, are normally not allowed to disclose internal or confidential information. Whistleblowers, therefore, need protection if they make a disclosure in good faith and on the basis of reliable evidence.

In the history we find many prominent cases which produced special legal efforts as the German 'lex Ossietzky'. In his periodical *Die Weltbühne*, the German Nobel Peace Prize Laureate Carl von Ossietzky, a journalist and writer in the 1920s and 1930s, disclosed secret military co-operation (especially concerning the development of an illegal German airforce) between the German army and the Soviet authorities, which violated the international agreements

¹ This report bases on the book of Dieter Deiseroth, *Societal Verification*, BoD 2008.

concerning disarmament measures in the 1919 Versailles Peace Treaty. Though he and his defence counsels argued that this disclosure was justified by law because he disclosed “illegal state secrets”. He was convicted of treason and espionage by the German Supreme Court (“Reichsgericht”; verdict of 13th of November 1931) and imprisoned.

In the 1960s, after a long and controversial debate on the necessary consequences of the “Ossietzky-Case” and on the lessons to be learned, the German Criminal Code (Strafgesetzbuch) was amended; in 1968 the German parliament passed a special clause concerning the problem of illegal state secrets.

Since then the German Criminal Code includes an article (Section 93 par. 2) that by itself can authorize, support, and justify whistleblowing for instance in the arms industry, in administration, in the military and in research and development agencies.

The first concepts of social verification were products of the Cold War, when scientists advocated arms control, disarmament and transparency as alternatives to the danger of nuclear deterrence. In the late 1950s, Lewis Bohn and Seymour Melman proposed the idea of ‘Inspection by the people’. Their belief was that, in addition to monitoring by the official inspectorate of an international disarmament agreement, it would be useful to have an informal network based on public involvement. This could reinforce the work of the inspectorate and help undercut evasion efforts. Since illicit production of banned weapons would require substantial organisations and production systems the chances were that someone would eventually ‘blow the whistle’.

In the early 1960s, Grenville Clark and Louis Sohn mentioned the concept of ‘inspection by the people’ in their classic book, World Peace Through World Law. They proposed a revision of the UN Charter to establish a UN Inspection Service. An Annex dealing with citizen’s reporting would read:

... Any person having any information concerning any violation of this Annex or any law or regulation enacted thereunder shall immediately report all such information to

the United Nations Inspection Service. The General Assembly shall enact regulations governing the granting of rewards to persons supplying the Inspection Service with such information, and the provision of asylum to them and their families ... No nation shall penalise directly or indirectly any person or public or private organisation supplying information to the United Nations with respect to any violation of this Annex. ...

Leo Szilard considered the concept of 'inspection by the people' in his quixotic story *The Voice of the Dolphins*, published in 1961. He incorporated elements of the proposals of Bohn and Melman and suggested an award of one million dollars, tax free, to be paid by the government accused of a violation. This would be returnable if the information later turned out to be incorrect.

These cases and suggestions found entrance to the application of international law and even into national protection regimes for whistleblowers.

US whistleblower protection

The Federal Whistleblower Protection Act (5 USC sec. 1201), which became effective on 9th of July 1989, gives federal employees protection by forbidding government agencies from acting against any employee for declining to engage in illegal activity. The Act also covers activities banned by international (self-executing) treaties to which the US is a party. Under Article VI of the US Constitution, a treaty that has been adopted with the consent of two-thirds of the Senate and does not require legislation to implement its provisions domestically, automatically becomes national law.

Civil society 'second track' monitoring: Landmine Monitor

The 1997 Landmine Convention does not have a standing verification mechanism. In September 1998, however, non-governmental organisations (NGOs) involved in the International Campaign to Ban Landmines (ICBL) set up Landmine Monitor, a civil society-based reporting network for monitoring state compliance. For many years, NGOs and research centres, like the Stockholm International Peace Research Institute (SIPRI), have monitored compliance with

international treaties informally and individually. But Landmine Monitor is the first attempt to create a systematic, global non-governmental monitoring network. Although Landmine Monitor has no official status under the treaty, its reports cover every aspect of implementation and compliance by all countries, as well as thematic issues. The first report was presented to the First Meeting of States Parties in Maputo, Mozambique, in May 1999, while the second was presented to the Second Meeting of States Parties in Geneva, Switzerland, in September 2000.

France: civil society involvement in implementation of Landmine Convention

In France, one example of officially sanctioned citizens' reporting is NGO involvement in the process of implementing the Landmine Convention. The French Act concerning the Abolition of Anti-Personnel Landmines establishes in Article 9 a National Committee to participate in monitoring implementation of the country's obligations under the treaty. Membership of the committee, besides representatives of the French government and Parliament, will include NGO representatives. Article 10 of the Act states that the National Committee will provide for effective implementation of the Convention and the international activities of the French Republic concerning de-mining and help for victims of anti-personnel landmines. The French government is obliged to report annually to Parliament on the implementation of the Act. While these provisions provide for only limited participation by representatives of civil society in a public body involved in a verification process, the French initiative can be seen as a significant precedent in making societal verification more acceptable and likely.

Nuclear abolition under public survey

In the 1990s, Joseph Rotblat, in particular, took up these ideas and applied them to the concept of a treaty on the complete elimination of nuclear weapons. He suggested that the duty of the citizen to supply information about any violation should be an integral part of the accord. Disclosing data about sensitive national security matters to an international body in regard to a treaty

violation would, therefore, no longer be considered a crime or an act of treason, but be sanctioned by domestic law. Rotblat pointed out that apart from relying on their ad hoc observations, scientists and technologists could establish organisations to act as compliance watchdogs, monitoring the activities of individuals likely to become involved in an illegal project.

All establishments dealing with nuclear facilities, such as those processing and storing spent fuel elements from nuclear reactors or enrichment plants, should be subject not only to monitoring by the International Atomic Energy Agency (IAEA), but also by watchdog organisations.

As you know in the NWC exists a chapter:

Nuclear abolition under public survey

Nuclear Weapons Convention

Chapter VII. Rights and Obligations of Persons

A. Criminal Procedure

1. Any person accused of committing a crime under this Convention within the jurisdiction of a State Party of which such person is a citizen or resident shall be
 - a. tried according to the legal process of such State if found within such State, or
 - b. **surrendered to the International Criminal Court** if the crime alleged is within the jurisdiction of such Court and the State concerned is unable or unwilling to undertake adequate criminal procedures.

B. Responsibility to Report Violations

4. **Persons shall report any violations of this Convention to the Agency.** This responsibility takes **precedence over any obligation not to disclose information** which may exist under national security laws or employment contracts.

C. Protection for Persons Providing Information

Intra-state protection

6. Any person **reporting a suspected violation** of this Convention, either by a person or a State, shall be **guaranteed full civil and political rights including the right to liberty and security of person.**
7. States Parties shall take all necessary steps to ensure that no person reporting a suspected violation of this Convention **shall have any rights diminished or privileges withdrawn as a result.**
8. Any individual who **[in good faith] provides the Agency or a National Authority** with information regarding a known or suspected violation of this Convention **cannot be arrested, prosecuted or tried on account thereof.**
9. It shall be **an unlawful employment practice** for an employer to **discriminate against any employee or applicant for employment** because such person has opposed any practice as a **suspected violation of this Convention**, reported such violation to the Agency or a National Authority, or testified, assisted, or participated in any manner in an investigation or proceeding under this Convention.
10. Any person against whom a national decision is rendered on account of information furnished by such person to the Agency about a suspected violation of this Convention may appeal such decision to the Agency within [...] months of being notified of such decision. The decision of the Agency in the matter shall be final.

Inter-State Protection

11. Any person reporting a violation of this Convention to the Agency shall be **afforded protection by the Agency and by all States Parties**, including, in the case of natural persons, the right of asylum in all other States Parties if their safety or security is endangered in the State Party in which they permanently or temporarily reside.

Additional Provisions

12. [The Executive Council may decide to **award monetary compensation to persons providing important information** to the Agency concerning violations of this Convention.]
13. **Any person who voluntarily admits to the Agency having committed a violation of this Convention**, prior to the receipt by the Agency of information concerning such violation from another source, **may be exempt from punishment**. In deciding whether to grant such exemption, the Agency shall consider the gravity of the violation involved as well as whether its consequences have not yet occurred or can be reserved as a result of the admission made.

It is very important that the General Assembly does not only treat the Convention in the nuclear abolition part but either in the verification part with the essential protection of whistleblowers. So tragic personal destinies as in the case of Mordechai Vanunu might be avoided in the future.