Dear Heidi, Dear Colleagues, Ladies and Gentleman,

Thank you Madame Chair and delegation of Canada for the opportunity to speak at this ICM. I will focus on the topic of compliance in multilateral arms control agreements, since the prohibitions aspects belong to the scope of the Treaty.

Let me start with general note. Arms control treaties and nonproliferation commitments are about enhancing the national security of the State Parties by reducing the threat. But it is not in the negotiation of an agreement or its specific provisions, however well formulated they may be, that the work of arms control and nonproliferation is accomplished. No arms are controlled and no disarmament achieved until agreements are implemented. In order to have confidence that the threat has been diminished, compliance must be verified and significant noncompliance identified and addressed. If compliance issues are not addressed effectively, the credibility of the particular agreement and the entire nonproliferation and arms control regime may be at risk.

The ultimate goal of the treaty verification mechanism is to determine and promote treaty compliance. But no amount of verification activity can ensure 100 % compliance. Compliance is ultimately a political decision, based on states’ perceived security interests and objectives. So what makes states comply with the treaties they have signed?

One can say, that states like humans feel certain obligation to live up to their commitments. This principle in international law is represented by the Latin phrase PACTA SUNT SERVANDA (treaties must be respected). Especially before World War II, states treated arms control treaties like gentlemen’s agreements. In the 1925 Geneva Protocol – the first modern multilateral disarmament treaty – the only compliance mechanism invoked in the text is the sense of national honour.
During the Cold War there appeared to be gradual emphasis on stronger verification measures due to the low level of trust in the bipolar World. Still first arms control and disarmament treaties from 60-ies and 70-ies of the XX century contain rather limited number of provisions related to compliance. The nature of those provisions was merely soft (incentives for compliance, consultations among parties, promotion of compliance). It is fair to say, that there have been few occasions during the early Cold War time when nations have openly violated disarmament treaties to which they were party. But consecutive events and disputes over violation of arms control agreements stimulated further development of the compliance provisions in the most recent treaties, with the Chemical Weapons Convention of 1993 being the most prominent example of this approach.

There are the incentives for compliance and disincentives for non-compliance that can be applied by the state parties. Compliance provisions in the arms control and disarmament treaties could be divided into number of categories:

1. Consultations and cooperation among parties to facilitate compliance;
2. Mechanism for clarification of compliance (meeting of state parties, good offices of UN SG);
3. Domestic implementation measures (legal and institutional);
4. Lodging/referral of non-compliance to UN Security Council or General Assembly;
5. Peaceful settlement of disputes related to compliance (separate form disputes related to the interpretation of the treaty);
6. Measures to redress situation of non-compliance within specific time;
7. Collective restrictive measures, including sanctions.
8. Measures to restrict or suspend a party’s rights under the treaty;
9. Creation of specific treaty Organisation to promote compliance;
10. Incentives to promote compliance.

Usually those provisions and mechanisms in the most elaborated, full-fledged treaties are of gradual nature and represent a step by step approach, leading to the decision on compliance in every specific case. Many, if not all of those categories of provisions could be possibly discussed in the process of negotiating FMCT, using them rather as a tool-box than complete catalogue.

GGE in its 2015 report devoted some attention to different aspects of the issue of compliance, but felt that these issues merited further consideration.

A treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices must, in accordance with document CD/1299, be non-discriminatory, multilateral and internationally and effectively verifiable. To experts, this meant the treaty would deter and detect non-compliance in a timely manner, provide credible assurance that States parties are complying with their treaty obligations and guard against frivolous and/or abusive allegations of non-compliance.
GGE experts agreed that a process would be needed to address allegations of non-compliance. Many experts saw value in using a cooperative approach in response to initial reports of non-compliance, which could serve as an incentive by ensuring the participation of involved parties. Only where serious concerns are identified, and where cooperative deliberations are unproductive or inconclusive, would a finding of non-compliance be made. Some experts suggested assessments of non-compliance could be addressed within the conference of States parties. The executive council, an ad hoc committee or the conference on States parties, may have a role in each or any of these approaches.

Some experts recommended that future negotiators consider ways to promote adherence to the treaty in the design of legal and institutional arrangements by increasing trust and confidence in the treaty, including through incentives. Such incentives could possibly include some provisions encouraging/promoting compliance. In case of NPT those incentives include peaceful nuclear cooperation, in case of BTWC assistance to victims, in case of CWC assistance and protection against attack, economic and technological benefits, Ottawa Convention: help with mine clearance and destruction.

Giving the politically sensitive nature of the issue and its potentially significant implications, the compliance determination mechanism in the future FMCT treaty must be transparent, fact-based, effective and precise.

There is close connection and dynamic correlation between different aspects of the future treaty, as it was already stated. The same goals for the issue of compliance. A strong linkage exists between compliance and verification: the main goal of the treaty verification is to determine and promote treaty compliance. Effective and credible verification makes possible violation of the treaty less likely. Another connection exists between institutional models and compliance mechanism. Depending on the future possible structure of treaty governing bodies, the decision to empower specific body with the task to decide on the issue of non-compliance. The referral of the serious cases of non-compliance to the UN Security Council should be considered by the most representative body (i.e. conference of the State Parties), as it might raise some questions regarding the non-discriminatory nature of the treaty.

In conclusion, let me underline that the ultimate decision to comply or not with the provisions of the non-proliferation and arms control treaty is primarily motivated by national security interests. At the same time, carefully and purposely designed treaty provisions can facilitate treaty compliance or effectiveness. This will be the task for future negotiations of the FMCT treaty.

Thank you for your attention.