



Some Ideas on Upgrading NPT Safeguards

The present safeguards system under the Treaty on the Non-Proliferation of Nuclear Weapons is based on the IAEA Statute and on the obligations of the non-nuclear-weapon States Parties to the NPT which, under Article III.1, undertook to accept the IAEA safeguards with respect to all source or special fissionable material in all their peaceful nuclear activities. It follows from these obligations that these Parties to the Treaty must declare all their source or special fissionable material, and it is this declaration on which the model safeguards agreement (INFCIRC/153), under which they must report to the Agency on such material and the Agency must verify the fulfilment of these obligations, is based.

Articles 73 and 77 of the model safeguards agreement provide for the possibility of making special inspections in order to verify the information contained in special reports made available by the States or when the Agency considers that the information made available by the State, including explanations from the State and information obtained from routine inspections, is not adequate for the Agency to fulfil its responsibilities. Should a dispute arise in respect of the necessity of extended access by the Agency, it is to be settled in accordance with Articles 21 and 22 of the model agreement which, inter alia, provide for arbitration.

It does not follow explicitly from Articles 73 and 77 that undeclared nuclear activities of a given State outside the facilities defined by the safeguards agreement are implied. These articles should rather be

interpreted in such a way as to mean that the additional locations for inspections are understood to be installations located within the declared facilities at which use of source and special fissionable material subject to safeguards under Article III of the Treaty is made. But even if extensive interpretation of Articles 73 and 77 is allowed, then, taking into account the complexity of the procedures provided for in the model agreement, including the arbitration, it is hardly possible to provide in such a way for effective and reliable compliance with a safeguards agreement and, consequently, fulfilment of the Treaty.

Article 77 of the document INFCIRC/153 provides that in case action by the state is essential and urgent, Article 18 shall apply. The latter article, in its turn, provides that if the Board, upon the report of the Director General, decides that an action by the state is essential and urgent in order to ensure verification that nuclear material subject to safeguards under the agreement is not diverted to nuclear weapons or other nuclear explosive devices the Board shall be able to call upon the state to take the required action without delay, irrespective of whether procedures for the settlement of a dispute have been invoked.

In our view, chances of invoking article 18 in many cases may be very doubtful if not problematical at all. Suffice it to say that the Director General in his report to the Board will have to provide sufficiently justified evidence that the danger of diverting nuclear material subject to safeguards to nuclear weapons or other nuclear explosive devices does exist.

However, as has been shown by the Agency experience in its safeguards activities thus far, the existing system does not provide sufficiently comprehensive information which would enable the Director General to draw necessary conclusions justifying the need for urgent action.

Thus the state will still have an opportunity to invoke the arbitration procedure, which will extremely complicate the adoption of necessary and urgent action. As is known, the special inspections provisions have never been applied in practice.

The experience with Iraq has shown that when the world community is confronted with deliberate and thoroughly concealed attempts to acquire nuclear capabilities in violation of the safeguards agreement, a special verification mechanism is needed which should be implemented in close co-operation with the United Nations under Article III.B.I of the IAEA Statute and Article IX of the Agreement Governing the Relationship Between the United Nations and the International Atomic Energy Agency.

Proceeding from the above-said it deems reasonable, without changing the model agreement (INFCIRC/153) and without trying to interpret it in a broader sense, to draft a new instrument relating to the procedures for emergency inspections performed upon decision of the IAEA Board of Governors and, when appropriate, by demand of the UN Security Council, in order to supplement INFCIRC/153.

Such an instrument could be drafted by the Director General of the Agency and approved then by the Board of Governors, containing the following elements:

1. Establishing a special group, reporting directly to the Director General, in order to watch closely nuclear activities of the States Parties to the Non-Proliferation Treaty using all available information, national technical means of the States which have those means at their disposal, and other available sources of information, e.g. the Agency's data bases, information on nuclear exports under the arrangements in this field already existing or being developed, etc.

2. The Director General, on the basis of the information provided to him, would report to the Board of Governors about all cases where strong suspicions existed that a given State acted in non-compliance with a safeguards agreement. Of course, any Member of the Board would have the right to raise the question on its own initiative if and when convincing information to this effect is available.

3. The Director General, with the Board's consent, would send forthwith inspectors to verify the evidence facts indicating to the possible non-compliance with a safeguards agreement.

4. The States Parties to the Treaty would be bound to accept the inspection immediately and to provide access for the Agency's inspectors to the locations determined by the Board's decision for emergency inspection.

5. Should a State fail to agree with the decision of the Board of Governors or otherwise hamper conduct of the inspection, the Board, in accordance with the Article XII.C of the Statute, would report the fact forthwith to the UN Security Council and also, where appropriate, would take other measures provided for in that Article.

6. Any State wishing to dismiss possible suspicions of non-compliance with a safeguards agreement would have the right to request an emergency inspection on its territory.

Such complementary procedures to verify compliance with the Treaty on the Non-Proliferation of Nuclear Weapons apparently would be sufficiently effective and consistent with the Treaty as well as with the UN Charter and the IAEA Statute.

Another advantage of the proposed approach is that preservation of the INFCIRC/153-type agreement, as the main and obligatory tool of verification under the Treaty, in the form and with the understanding which have been applied heretofore and are being applied now would contribute to ensuring stability of the safeguards system and to maintaining confidence in it, which is important for attracting additional parties to the Treaty willing to comply conscientiously with their obligations under the Treaty. Adoption of a special document on emergency inspections would serve as a signal for potential violators and a warning to them at the ability and readiness of the IAEA to act promptly and resolutely with support of the authority of the UN Security Council.

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