



# **THE ROLE OF INTERNATIONAL ORGANIZATIONS IN WMD COMPLIANCE AND ENFORCEMENT: AUTONOMY, AGENCY, AND INFLUENCE**

**TREVOR FINDLAY**



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## ABOUT THE AUTHOR



**TREVOR FINDLAY** is a Principal Fellow in the School of Social and Political Sciences at the University of Melbourne. He has a Bachelor of Arts Honours degree in political science from the University of Melbourne and a master's degree and PhD in international relations from the Australian National University (ANU). He is an Associate Research Professor at the Norman Paterson School of International Affairs at Carleton University in Ottawa, Canada, where he was a tenured professor and director of the Canadian Centre for Treaty Compliance and held the

William and Jeanie Barton Chair. From 2011 to 2015 he was a senior researcher with the Project on Managing the Atom at the Harvard Kennedy School's Belfer Center for Science and International Affairs. He was a member of the United Nations Secretary-General's Advisory Board on Disarmament Affairs from 2013 to 2017, serving as chair in 2017. Dr Findlay served for 13 years in the Australian diplomatic service, including with Australian delegations to the Conference on Disarmament in Geneva and the United Nations Disarmament Commission and the First Committee of the General Assembly in New York. His diplomatic career was followed by academic appointments at the ANU's Peace Research Centre and the Stockholm International Peace Research Institute. He then served for seven years as Executive Director of the Verification Research, Training and Information Centre (VERTIC), a London-based non-governmental organization.

Dr Findlay is the author of six books and editor of several volumes, including the *Verification Yearbook*. He has contributed to multiple edited books and journals and directed major studies, including on the verifiability of a nuclear test ban, the future of nuclear energy and the role of the International Atomic Energy Agency (IAEA). His works include *Nuclear Dynamite: The Peaceful Nuclear Explosions Fiasco* (1990), *Nuclear Energy and Global Governance: Ensuring Safety, Security and Non-proliferation* (2011) and *Unleashing the Nuclear Watchdog: Strengthening and Reform of the IAEA* (2012). His latest book, *IAEA Safeguards Culture: Origins, Impact of Iraq, and Beyond* will be published in late 2020 by Harvard/MIT Press.

## ABBREVIATIONS AND ACRONYMS

<b>BTWC</b>	Bacteriological (Biological) and Toxin Weapons Convention
<b>CWC</b>	Chemical Weapons Convention
<b>CTBT</b>	Comprehensive Nuclear-Test-Ban Treaty
<b>CTBTO</b>	Comprehensive Nuclear-Test-Ban Treaty Organization
<b>EU</b>	European Union
<b>FFM</b>	Fact-Finding Mission (OPCW)
<b>IAEA</b>	International Atomic Energy Agency
<b>IMS</b>	International Monitoring System (CTBTO)
<b>JCPOA</b>	Joint Comprehensive Plan of Action
<b>NGO</b>	Non-Governmental Organization
<b>NPT</b>	Treaty on the Non-Proliferation of Nuclear Weapons (Non-Proliferation Treaty)
<b>OPCW</b>	Organisation for the Prohibition of Chemical Weapons
<b>PrepCom</b>	Preparatory Commission (CTBTO)
<b>UNSCOM</b>	United Nations Special Commission
<b>UNMOVIC</b>	United Nations Monitoring, Verification and Inspection Commission
<b>WMD</b>	Weapons of Mass Destruction



## SUMMARY

Major multilateral arms control and disarmament treaties dealing with weapons of mass destruction (WMD) often have mandated an international organization to monitor and verify State party compliance and to handle cases of non-compliance. There are marked differences in the mandates and technical capabilities of these bodies. Nonetheless, they often face the same operational and existential challenges. This report looks at the role of multilateral verification bodies, especially their secretariats, in dealing with compliance and enforcement, the extent to which they achieve “agency” and “influence” in doing so, and whether and how such capacities might be enhanced.

In WMD organizations it is the governing bodies that make decisions about non-compliance and enforcement. The role of their secretariats is to manage the monitoring and verification systems, analyse the resulting data – and data from other permitted sources – and alert their governing bodies to suspicions of non-compliance. Secretariats are expected to be impartial, technically oriented and professional. It is when a serious allegation of non-compliance arises that their role becomes most sensitive politically and most vital. The credibility of Secretariats in these instances will depend on the agency and influence that they have accumulated.

There are numerous ways in which an international secretariat can position itself for maximum agency and influence, essentially by making itself indispensable to member States and the broader international community. It can achieve this by engaging with multiple stakeholders, aiming for excellence in its human and technical resources, providing timely and sustainable implementation assistance, ensuring an appropriate organizational culture and, perhaps most of all, understanding that knowledge is power. The challenge for supporters of international verification organizations is to enhance those elements that give them agency and influence and minimize those that lead to inefficiencies, dysfunction and, most damaging of all, political interference in verification and compliance judgements.

# 1. INTRODUCTION

Three major multilateral arms control and disarmament treaties dealing with weapons of mass destruction (WMD) – the 1968 Treaty on the Non-Proliferation of Nuclear Weapons (Non-Proliferation Treaty, NPT), the 1993 Chemical Weapons Convention (CWC) and the 1996 Comprehensive Nuclear-Test-Ban Treaty (CTBT) – have mandated an international body to monitor and verify compliance by their States parties and to play a key role in handling cases of non-compliance. These organizations are the International Atomic Energy Agency (IAEA), the Organisation for the Prohibition of Chemical Weapons (OPCW) and the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO).<sup>1</sup> The one major multilateral WMD treaty missing a verification organization is the 1972 Biological and Toxin Weapons Convention (BTWC), although it does have a three-person Implementation Support Unit (ISU).<sup>2</sup>

In addition to the three standing organizations, several temporary, ad hoc arrangements have been set up to meet one-off WMD verification and compliance needs. These include the United Nations Special Commission (UNSCOM) and the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC), both subsidiary bodies of the United Nations Security Council that were established in the 1990s to deal with Iraq's WMD capabilities.<sup>3</sup> Also falling into this category are the verification missions established in 1984–1988 by the United Nations General Assembly to verify alleged violations of the 1925 Geneva Protocol, which bans the use of chemical weapons in inter-state conflicts, during the 1980–88 Iran–Iraq War;<sup>4</sup> the United Nations Mission to Investigate Allegations of the Use of Chemical Weapons in the Syrian Arab Republic, established in 2013; and the OPCW–United Nations Joint Investigative Mechanism (JIM), established in 2015 in response to the use of chemical weapons in the Syrian Arab Republic.<sup>5</sup> The 2015 Joint

1 The CTBT has not yet entered into force, and the CTBTO has not yet been formally established. In the meantime, many of its tasks are undertaken by a Preparatory Commission, commonly also referred to as the "CTBTO".

2 There have been attempts to fill the organizational lacuna, and one ad hoc attempt, in 1997, to consider a specific allegation of biological weapons use, by the United States against Cuba. See J. Littlewood, *The Biological Weapons Convention: A Failed Revolution*, 2005; and J.-P. Zanders and J. Hart, "Chemical and Biological Weapon Developments and Arms Control", *SIPRI Yearbook 1998: Armaments, Disarmament and International Security*, 1998, pp. 474–480, <https://www.sipri.org/sites/default/files/SIPRI%20Yearbook%201998.pdf>.

3 T. Findlay, "Lessons of UNSCOM and UNMOVIC for WMD nonproliferation, arms control and disarmament" in W.P. Singh and R. Thakur (eds.), *Arms Control After Iraq: Normative and Operational Challenges*, United Nations University Press, 2006, pp. 140–159, <https://collections.unu.edu/eserv/UNU:2472/pdf9789280811315.pdf>; and T. Findlay, "Looking Back: The UN Monitoring, Verification and Inspection Commission", *Arms Control Today*, vol. 35, no. 7, September 2005, <https://www.armscontrol.org/act/2005-09/looking-back-un-monitoring-verification-inspection-commission>.

4 "Summary of UN Investigations into Alleged Use of Chemical Weapons in the Iran–Iraq War, 1984–1988", in T. Findlay (ed.), *Chemical Weapons and Missile Proliferation: With Implications for the Asia/Pacific Region*, 1991, Appendix 1.

5 P.F. Walker, "Three Decades of Chemical Weapons Elimination: More Challenges Ahead", *Arms Control Today*, vol. 49, no. 10, December 2019, <https://www.armscontrol.org/act/2019-12/features/three-decades-chemical-weapons-elimination-more-challenges-ahead>. See also R. Trapp, *Compliance Management under the Chemical Weapons Convention*, WMD Compliance & Enforcement Series no. 3, UNIDIR, 2019, <https://doi.org/10.37559/WMD/19/WMDCE3>.



Comprehensive Plan of Action (JCPOA), known as the Iran deal, provided for a Joint Commission charged, along with the IAEA, with handling compliance issues. This report focuses on the three standing verification bodies – the IAEA, the OPCW and the CTBTO – referring to the other examples when that might prove illuminating.

Although the universe of cases is tiny, and although there are marked differences in their mandates and technical capabilities, the three major international WMD bodies face similar operational and existential challenges. They share these with a wide range of other international organizations. The greatest dilemmas arise from the political context in which such structures are embedded. Operating in a political environment obliges them to have much more than just credible management and technical expertise – they also need navigational skills to weather political storms and survive intact. WMD bodies confront such challenges in a more amplified form than other international bodies because the issues they deal with touch on the raw nerves of national and international security, national sovereignty and national prestige. The BTWC, for example, is much more sensitive from a national security perspective than the 1992 Biodiversity Convention, laudable though the latter is.

The key topics addressed in this report are the role of multilateral verification bodies in dealing with compliance and enforcement, the extent to which they achieve “agency” and “influence” in doing so, and whether and how such capacities might be enhanced. While clearly much of their activity is devoted to monitoring and verification, the emphasis here is on how they contribute to the “back end” of the process, when evidence of non-compliance arises from monitoring, verification and other means.

By “agency” is meant the ability of an organization to pursue its mandate and goals with the greatest degree of autonomy and capacity.<sup>6</sup> “Influence” means the ability of an organization to affect international outcomes, in this case the enhancement of international security through arms control and disarmament. While it might be argued that influence comes automatically with agency, it is useful to distinguish them in order to emphasize the importance of international organizations making their case in the court of international opinion, rather than simply “getting on with the job” and hoping the world notices. Among states this is known as “soft power”.<sup>7</sup>

This report does not argue that international organizations should relentlessly increase their agency and influence, as this could lead them to exceed their mandates, impinge on the responsibilities of other bodies and derogate unjustifiably from the national sovereignty of their member States. But international organizations should have the right and, indeed, the obligation to fulfil their mandates in the most creative, effective and efficient way possible. After all, that is why they have been delegated authority and responsibilities in the first place.

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6 D.G. Hawkins et al. (eds.), *Delegation and Agency in International Organizations*, 2006, <https://doi.org/10.1017/CBO9780511491368>.

7 J.S. Nye, *The Future of Power*, 2011.

Multilateral organizations, such as the three WMD bodies discussed here, are set up by States to carry out international functions that they themselves cannot manage, either alone or in concert with a limited number of other States. They are attempts to solve the “collective action” problem, avoid the “tragedy of the commons” and head off “free riding” behaviour that can lead to the proliferation and use of the weapons in question. International organizations certainly acquire legal personality and legal autonomy (much as corporations do), along with status as international actors (including representation, like observer missions of States, at the United Nations). Beyond this there is a robust academic debate between realists, multilateralists and constructivists about the extent to which international organizations, operating in an international system dominated by powerful States, can truly acquire agency and influence.<sup>8</sup>

The most difficult challenge facing such organizations is to what extent they can deal effectively with States that violate their legally binding obligations. Key questions include:

- How much credibility and influence do they have in pursuing such inherently fraught mandates? How competently and professionally do they go about their tasks without political interference?
- How likely is it that the international community will heed their conclusions and recommendations about a likely or actual non-compliance case and take appropriate action?
- How likely will an allegedly non-compliant State acknowledge the authority of the organization (as a whole, as well as its head and its secretariat) and voluntarily return to compliance? Alternatively, what incentives and sanctions, mostly those imposed by other States, will it take to induce the State to comply against its will?
- How do such organizations manage and learn from cases of non-compliance and strengthen their capacities to cope with future cases?
- What risks are there in doing nothing or, alternatively, pursuing reform?
- Should member States and other stakeholders encourage such organizations to strengthen their agency and influence, within an existing or an expanded mandate, and how should they proceed without unintended consequences?

This report can only hope to scratch the surface of these complex topics, but they point to a rich policy and research agenda.

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<sup>8</sup> E.g. R.O. Keohane and J.S. Nye, “Transgovernmental Relations and International Organizations”, *World Politics*, vol. 27, no. 1, October 1974, pp. 39–62, <https://doi.org/10.2307/2009925>; and M.P. Karns and K.A. Mingst, *International Organizations: The Politics and Processes of Global Governance*, 2nd ed., 2010, chapter 2.

## 2. MANDATES AND CAPABILITIES

The mandates and capabilities of the three large multilateral WMD-verification organizations – the IAEA, the OPCW and the CTBTO – differ considerably in their details, while still following the same basic model. All are mandated by a treaty to carry out verification and compliance tasks related to a type of WMD. They have similar governance structures. Each has been provided with a standing secretariat of international civil servants, equipped with technical capabilities for monitoring and verification, as well as a capacity to contribute to a process of investigating non-compliance. All are, naturally, beholden to their member States for political, financial and technical support. Additional voluntary support from States and other stakeholders, such as the scientific community, non-governmental organizations (NGOs) and industry, has also been garnered by all three, in varying degrees, somewhat attenuating their dependence on member States.

The IAEA, the oldest of the three, is unique in having been established prior to the advent of the NPT. The treaty mandated the Agency to devise the treaty's verification regime, which has come to be known as the comprehensive safeguards system.<sup>9</sup> Dating to 1957,<sup>10</sup> the IAEA carries out functions for a range of nuclear-related treaties, of which the NPT is only one.<sup>11</sup> This renders questions of agency and influence more complex, but also provides more avenues for trade-offs and influence-seeking. The OPCW<sup>12</sup> and CTBTO<sup>13</sup>, in contrast, were both purpose-built to verify compliance with a single treaty, the CWC and the CTBT, respectively. The CTBT has not yet entered into force, rendering its verification organization only provisional. While in theory this might make its inclusion in the universe of cases questionable, in fact the Preparatory Commission (PrepCom) for the CTBTO as well as its Provisional Technical Secretariat and a sophisticated International Monitoring System (IMS) have been established and often operate in strikingly similar ways to other fully fledged international organizations.<sup>14</sup> Questions of agency and influence are thus as relevant to the CTBTO as to the other two organizations.

In considering questions of agency and influence it is necessary to distinguish between the various parts of an international organization. The governance arrangements for the three standing organizations are where political power is vested. They are similar but with

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9 On the origins of the IAEA see L. Scheinman, *The International Atomic Energy Agency and World Nuclear Order*, 1987.

10 IAEA Statute, 1957, <https://www.iaea.org/sites/default/files/statute.pdf>.

11 The IAEA also has a function in, e.g., the JCPOA, nuclear weapon-free zone agreements, the Convention on the Physical Protection of Nuclear Material and Nuclear Facilities (CPPNM) and the Convention on Nuclear Safety (CNS).

12 On the origins of the OPCW see I.R. Kenyon and D. Feakes (eds.), *The Creation of the Organisation for the Prohibition of Chemical Weapons: A Case Study in the Birth of an Intergovernmental Organisation*, 2007.

13 On the origins of the CTBTO see K.A. Hansen, *The Comprehensive Nuclear Test Ban Treaty: An Insider's Perspective*, 2006.

14 E.g. CTBTO, "Executive Secretary Lassina Zerbo on the Unusual Seismic Event Detected in the Democratic People's Republic of Korea", 3 September 2017, <https://www.ctbto.org/press-centre/press-releases/2017/ctbto-executive-secretary-lassina-zerbo-on-the-unusual-seismic-event-detected-in-the-democratic-peoples-republic-of-korea/>.

different nomenclatures. The IAEA is governed by a General Conference of all member States and a 35-member Board of Governors. The OPCW has a Conference of the States Parties and 41-member Executive Council with similar powers to the IAEA's governing bodies. The structure of the future CTBTO will follow the OPCW's model and nomenclature, but with a 51-member Executive Council. In all three cases, while the general conferences of member States are intended to be the principal organ, in reality the executive body is politically the most important: it establishes broad policy for the organization, approves the budget and deals, crucially, with cases of non-compliance and enforcement when the most difficult and sensitive decisions are required. Since all the governing bodies are comprised of representatives of States, they are quintessentially political, with their members vying for power and influence among themselves and within the organization. In making judgements about non-compliance by a treaty partner, they inevitably base their conclusions not just on data and analysis but on political calculation.

Despite their similarities, the three organizations are distinctive in their membership and the status of their governing bodies in respect of their treaty responsibilities. In the case of the IAEA, three founding member States – India, Pakistan and Israel – are not party to the NPT. As members of the Agency's Board of Governors (either semi-permanent or elected), such States may participate in judging compliance with a treaty to which they are not party and which, over the years, they have often actively opposed.<sup>15</sup> To the extent that three of its most influential member States cannot be counted on for even declaratory support for a treaty verification system that it is obliged to implement, promote and defend, this complicates the IAEA's agency and influence.<sup>16</sup>

As for the CTBTO, since it is still only provisional, both signatories and those that have also ratified the CTBT are considered members of the PrepCom and in practice there is little difference in their behaviour. But until entry into force, there can be no legally binding judgements about non-compliance, only political ones. Nevertheless, the treaty's verification system is so structured that it inevitably monitors for nuclear testing by all States, whether signatories, ratifying states or neither, as it covers the entire globe indiscriminately. Even more unusual, the provisional CTBTO has taken to commenting critically on nuclear tests it has detected that have been conducted by States that have neither signed nor ratified the treaty, namely India, Pakistan and the Democratic People's

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<sup>15</sup> Technically they are judging compliance with a safeguards agreement between the state and the IAEA pursuant to the NPT, but to deny that this represents non-compliance with the NPT is casuistry that undermines the validity of the NPT.

<sup>16</sup> Although there may be a Board of Governors norm that discourages states from involving themselves in non-compliance matters relating to treaties to which they are not party, states still participate in debating and voting on the issue. India, which had been customarily lenient towards the Islamic Republic of Iran over non-compliance allegations against it, unexpectedly began voting in favour of Board resolutions against the Islamic Republic of Iran in 2005. As widely reported by Indian analysts, this was done in the context of negotiations with the United States on a bilateral nuclear agreement that India was eager to secure. See "India Votes against Iran in IAEA Resolution", *The Hindu*, 27 November 2009, <https://www.thehindu.com/news/national/India-votes-against-Iran-in-IAEA-resolution/article16894640.ece>. [India and Pakistan have over the years offered less than vigorous support for improving IAEA safeguards. After the US-India Civil Nuclear Agreement was concluded in 2005, the Agency was obliged to negotiate a special safeguards agreement with India that applies only to facilities that India chose to designate as civilian and which does nothing to advance the goals of the NPT. Whether this arrangement gives the IAEA increased "agency" with India is a moot point.](https://www.thehindu.com/news/national/India-votes-against-Iran-in-IAEA-resolution/article16894640.ece)

Republic of Korea. Even in its provisional state, the CTBTO has thus paid attention to States not complying with what is currently an almost universally accepted non-testing norm regardless of their treaty status. Assumptions about agency and influence are challenged by this unique situation.

This leaves the OPCW as the only example in the WMD field of the standard model of international organization: it verifies compliance only of its member States, since all are by definition parties to the CWC and subject to the same legally binding obligations. The OPCW thus followed traditional treaty constraints in refraining from seeking to verify allegations of the use of chemical weapons in the Syrian Arab Republic until that country acceded to the CWC in 2013.<sup>17</sup>

In addition to the governing bodies – and this is where public confusion often occurs – there is in each instance a standing secretariat staffed by international civil servants, including administrators, technical and scientific staff, analysts and (in two of the three organizations) inspectors. These secretariats have been described as “invisible governance” by former United Nations official John Mathiason due to their low public profile, and it is they who run the day-to-day operations of the organization.<sup>18</sup> Secretariat employees are legally required to be objective, impartial and beholden to no member State, having taken an oath to act in the interests of the organization, not their country of origin. Their substantive work focuses on assisting States to implement their treaty obligations; monitoring and verifying State compliance; and, if necessary, laying the groundwork for action by the organization’s executive body and ultimately enforcement action in a case of serious non-compliance.

FIGURE 1. Levels of staffing across WMD-related treaty organizations



17 The OPCW did, however, provide support for the United Nations mission in 2013 led by Åke Sellström prior to Syria joining the CWC. OPCW procedures were also used in this mission, as permitted by the treaty in case of alleged use by a non-State party. See R. Trapp, Compliance Management under the Chemical Weapons Convention, WMD Compliance & Enforcement Series no. 3, UNIDIR, 2019, <https://doi.org/10.37559/WMD/19/WMDCE3>, p. 25. Provisional application is also possible: the Syrian Arab Republic agreed to implement the CWC provisionally in the month before it became a party. The Islamic Republic of Iran has agreed to provisionally implement its Additional Protocol with the IAEA.

18 J. Mathiason, Invisible Governance: International Secretariats in Global Politics, 2007.

As to their technical assets, the IAEA Secretariat has by far the largest number of staff of the three (see Figure 1) and runs the most sophisticated verification system. Its capabilities include nuclear accountancy, on-site inspections of various kinds, analytical capabilities that draw on safeguards-derived and open-source data, remote monitoring including satellite imagery, and sophisticated sample analysis. Its procedures in case of suspected non-compliance are well established and practised, since there have been several cases of safeguards non-compliance, including deliberate egregious ones.<sup>19</sup>

The OPCW also has impressive technical capabilities, including various types of on-site inspection and analysis. More recently, it has been mandated to apply these tools to investigate alleged chemical weapon attacks in the Syrian Arab Republic.<sup>20</sup> It is in the process of redirecting its verification effort from the initial, relatively straightforward task of verifying destruction of existing declared stocks of chemical weapons, which has been largely completed.<sup>21</sup> The emphasis is shifting to ongoing monitoring of chemical industry and capacity-building for member States. The Technical Secretariat usually describes this as preventing the re-emergence of chemical weapons through broad implementation of the Convention at the national level. In addition, the Conference of the States Parties has entrusted the Technical Secretariat with new powers to investigate alleged use of chemical weapons.

The CTBTO, for its part, operates the complex and technically impressive IMS, with global coverage. The Provisional Technical Secretariat has been successfully bringing it into existence, ready for Day One of the Treaty's entry into force. It includes a satellite-based communications system to transmit the data to CTBTO headquarters in Vienna and an International Data Centre to collect, process and store the data. The system has been continuously enhanced as technology has improved, to the point where its capabilities are already much greater than envisaged by the treaty negotiators.<sup>22</sup>

A key generator of agency and influence is the head of the organization. Elected by the member States, whether known as the Director-General or Executive Secretary, he or she (so far there has never been a female head) represents the organization as a whole,

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19 T. Findlay, Proliferation Alert! The IAEA and Non-Compliance Reporting, Managing the Atom Report no. 2015-04, Belfer Center for Science and International Affairs, Harvard University, October 2015, <https://www.belfercenter.org/sites/default/files/files/publication/proliferationalert-web.pdf>.

20 Controversially, the Technical Secretariat has also been given new powers to identify perpetrators of chemical weapons use but these relate only to the Syrian Arab Republic (it may assist other member States with investigations upon request). See OPCW, Conference of the States Parties, "Addressing the Threat from Chemical Weapons", Decision C-SS-4/DEC.3, 27 June 2018, [https://www.opcw.org/sites/default/files/documents/CSP/C-SS-4/en/css4dec3\\_e\\_doc.pdf](https://www.opcw.org/sites/default/files/documents/CSP/C-SS-4/en/css4dec3_e_doc.pdf). An OPCW fact-finding mission mechanism was established in 2014 with Syrian agreement. See OPCW, Technical Secretariat, "Summary Report of the Work of the OPCW Fact-Finding Mission in Syria Covering the Period from 3 to 31 May 2014", S/1191/2014, 16 June 2014, [https://www.opcw.org/sites/default/files/documents/S\\_series/2014/en/s-1191-2014\\_e.pdf](https://www.opcw.org/sites/default/files/documents/S_series/2014/en/s-1191-2014_e.pdf), p. 3.

21 P.F. Walker, "Three Decades of Chemical Weapons Elimination: More Challenges Ahead", Arms Control Today, vol. 49, no. 10, December 2019, <https://www.armscontrol.org/act/2019-12/features/three-decades-chemical-weapons-elimination-more-challenges-ahead>.

22 Committee on Technical Issues Related to Ratification of the Comprehensive Nuclear Test Ban Treaty, Technical Issues Related to the Comprehensive Nuclear Test Ban Treaty, National Academy of Sciences, 2002, <https://doi.org/10.17226/10471>, p. 38.

including its member States, when speaking or acting on the organization's behalf.<sup>23</sup> In addition, the head of the organization is the chief international civil servant, responsible for managing the secretariat and representing its employees. But they are much more than that: each is the public face of their organization, especially for the media and public, and the key interlocutor between member States and the secretariat. As a diplomatic player he or she is accorded diplomatic privileges and immunities equivalent to those of a resident ambassador, although politically their influence can be greater. Depending on their professional and personal qualities and skills, the head of the organization can significantly amplify or degrade the agency and influence of their organization. Especially during international nuclear crises, such as those concerning Iraq, the Democratic People's Republic of Korea and Fukushima in Japan, they and their staff can have more agency and influence than many of the small, less powerful States that comprise the bulk of the United Nations' membership. The significance of the leadership's role is often undervalued in assessing the agency and influence of international organizations.

Due to the political sensitivities involved, the enforcement powers of each organization, unlike those for monitoring and verification, are not delegated to the secretariat but to their governing bodies (either their executive body or their general conference of all member States). When a State seriously fails to comply with its international legally binding obligations, technical findings made by the relevant organization's secretariat are to be drawn to the attention of its governing body for judgement as to whether non-compliance has occurred and whether action should be taken.

The decision about whether a non-compliance case is serious enough to raise it with a governing body formally lies either with the secretariat or with a State party, depending on the provisions of the treaty. Secretariat agency and influence are most consequential and potentially most fraught when they are obliged to decide what non-compliance evidence to use and when. Informally, if such evidence has been generated by the official verification system, secretariat officials will need to determine among themselves how seriously to treat potentially incriminating data and whether to alert the head of the organization and, through him or her, the member States. Information received by a secretariat from external sources such as intelligence information from member States or from open sources, will also need to be examined and acted on if warranted, although this will vary depending on the powers accorded to the secretariat. The IAEA Secretariat, for instance, has felt obliged to examine information provided by Israel about possible historic Iranian nuclear activities. In addition, the Secretariat learned from the Iraq case that it could no longer ignore open-source information indicating possible non-compliance.

All international bodies that are mandated to deal with State non-compliance struggle mightily to fulfil expectations of them the closer they get to the enforcement measures at the end of the compliance process – once non-compliance has been determined.

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<sup>23</sup> The IAEA Secretariat is headed by a Director General. The OPCW's Technical Secretariat (presumably given that title to emphasize its allegedly apolitical nature) is also headed by a Director-General. The CTBTO has the same model as the OPCW: a Technical Secretariat and a Director-General (currently Executive Secretary of the Preparatory Commission until entry into force).

This is in part because there is rarely much of a road map about how such cases are to be processed. Even when there is a detailed compliance plan literally called a “road map”, as in the case of the JCPOA, there are multiple opportunities for missteps and misunderstandings, especially for those charged with the assessment of compliance.<sup>24</sup>

WMD treaties provide much detail about how governing bodies are to be established and run and how monitoring and verification is to occur, but little about how treaties will be enforced. States are unwilling to specify enforcement action in advance, preferring to leave it vague lest they themselves become a target of the specified enforcement action. The enforcement powers of such bodies are usually limited to withdrawal of the State’s “rights and privileges”, such as withholding assistance or depriving it of its voting rights. The CWC, for example, refers to “collective measures” that may be taken by the OPCW, but this is vague and, in any case, these may only be “recommended” to member States. Ultimately, a State may be expelled from the organization, a particularly self-defeating sanction for non-compliance as it relieves the offender of further pressure from the organization to return to compliance.<sup>25</sup>

All WMD treaties pass the enforcement buck to the United Nations Security Council, which is the only international body with the power to impose legally binding sanctions on a State. It is also where the five permanent members can exercise a veto, unlike in the governing bodies of the WMD-verification organizations. The Security Council’s responses range from doing nothing, demanding the State return to compliance or requesting further information at one end of the spectrum, to economic and other sanctions at the other, ultimately including the use of military force. One of the Security Council’s tricks is to throw a vexing non-compliance problem back to a technical secretariat with a demand for further, better or more intrusive verification. This may be due to disagreement within the Council about how to proceed or in order to buy time for diplomatic efforts to resolve the crisis. Either way, the pressure is back on the secretariat to provide a way out.

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24 IAEA, Board of Directors, ‘Roadmap for Clarification of Past and Present Outstanding Issues regarding Iran’s Nuclear Program’, GOV/INF/2015/14, 14 July 2015, signed by Iran and the IAEA prior to announcement of the JCPOA.

25 This is illustrated by the case of the Democratic People’s Republic of Korea. Although it left the IAEA on its own accord rather than being expelled, its departure has left the Agency with few tools to induce a return to compliance.



### **3. THE WORKINGS OF AGENCY AND INFLUENCE**

The reason why the agency and influence of international organizations is so difficult to characterize is because it is so ephemeral. Ultimately, international organizations are no match for the most powerful States in the international system. As Stalin said of the Pope, “How many divisions does he have?” Yet while great powers may seek to strongly influence the direction of international organizations, and may on occasions bully them, they rarely seek to close them down. International organizations serve the interests of great powers by helping to preserve the status quo and dampen down international competition and rivalry, while providing a mechanism for resolving conflict among States short of war. Although powerful States seek to shape international organizations to suit their preferred outcomes, they usually find it necessary to compromise such preferences in negotiating with others about how such organizations will operate. In setting up WMD-verification organizations, negotiators face two closely intertwined challenges:

1. Giving governing bodies an orderly, rules-based process for arriving at judgements about State party non-compliance that channels political differences among member States; and
2. Giving heads of organizations and their secretariats enough autonomy, agency, influence and technical capabilities, shielded from political interference, to produce credible fact-based information and analysis to inform judgements on non-compliance.

#### **3.1. CHANNELLING POLITICS IN GOVERNING BODIES AND KEEPING IT OUT OF SECRETARIATS**

The WMD treaties seek to “democratize” governing bodies of their verification organizations to allow decisions to be made in the best interests of the organization and its foundational treaty. The governance arrangements are clearly political, as in domestic parliamentary systems, in that varying political viewpoints are represented, but norms and rules are established to channel politics in an orderly direction, to the extent possible. An attempt is made to attenuate the raw power of the most influential States.

Unlike the Security Council, no member State has a veto in the WMD-verification bodies: all have a say and a vote in how the organization is run. Election to the executive body is possible for all member States, permitting them to be involved in decisions about how the verification and compliance system is managed and, most crucially, on any non-compliance cases that arrive. Notably, however, categories of State that are electable to boards are artfully defined to ensure that the most powerful States are always represented. In the IAEA case, for instance, the States most advanced in nuclear technology are always “elected”.

If a State is accused of non-compliance it has the right to defend itself in the governing body. Non-compliance decisions are, in these circumstances, more likely to be able to be portrayed, and consequently publicly perceived, as fair and reasonable, as the accused State has had the right to make its case. Even in the case of the JCPOA, where the non-compliant State has been identified in advance, the Islamic Republic of Iran is represented on the Joint Commission so that its point of view about interpretation of and compliance with the arrangement may be heard. It even has a vote in, although not a veto over, Commission decisions.

However, expecting WMD governing bodies to be apolitical is quixotic. Judging non-compliance cases is like impeachment in domestic settings: the language is judicial but the proceedings are political. In the early days of the IAEA there was a quaint notion that its Board of Governors could be non-partisan and impartial (the term “governor” hinted at that). Many of the founding governors were indeed respected nuclear scientists or leaders of national atomic energy bodies who seemed convinced that they could act in the “Spirit of Vienna” solely to advance the interests of the Agency. The Board did for many years seek consensus in its decision-making (until the controversy over the Islamic Republic of Iran forced it into voting in 2005).<sup>26</sup> Since then, the Board has been perceived as increasingly “politicized”, as if politics were previously absent.

Various means have been devised by treaty negotiators to attenuate the intrusion of politics in non-compliance proceedings. In negotiating the governance arrangement for the OPCW, a voting procedure was agreed in a valiant attempt to keeping politics at bay in at least one aspect of a serious non-compliance case. A so-called red-light procedure permits the Technical Secretariat to prepare for and conduct a challenge inspection, once called for by a State Party, unless the Executive Council votes by a three-quarters majority to stop it.<sup>27</sup> In contrast, the CTBT mandates a green-light procedure, which will require a positive vote by the Executive Council to allow a challenge inspection to proceed, although the Technical Secretariat will be able to begin preparations as soon as a request is received from a State party.<sup>28</sup> The IAEA Secretariat has much greater authority in seeking and conducting a Special Inspection (the equivalent of a challenge inspection), without reference to the Board. Its Director General is also authorized to craft the case against a State that is suspected to be in non-compliance for presentation to the Board and ultimately to the United Nations Security Council. In both the OPCW and CTBTO cases it is a State party, not the secretariat, that is entitled to formally bring a case of non-compliance to the attention of the Executive Council. In practice, secretariats

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26 While it somehow largely managed to insulate itself from the Cold War, it periodically engaged in bitter debate, often on political lines, including on the early implementation and strengthening of safeguards, as well as more obvious political issues such as the membership of South Africa and Israel.

27 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, Article IX(17), <https://www.opcw.org/chemical-weapons-convention/articles/article-ix-consultations-cooperation-and-fact-finding>. See also T. Abe, “Challenge Inspections under the Chemical Weapons Convention: Between Ideal and Reality, *Nonproliferation Review*, vol. 24, nos 1–2, 2017, pp. 167–184, <https://doi.org/10.1080/10736700.2017.1380429>.

28 Comprehensive Nuclear-Test-Ban Treaty, [https://www.ctbto.org/fileadmin/user\\_upload/legal/CTBT\\_English.pdf](https://www.ctbto.org/fileadmin/user_upload/legal/CTBT_English.pdf), Article IV(46).

have informal means of raising a non-compliance issue among member States (without breaching confidentiality rules).

There have been proposals over the years for automaticity of response to be built into non-compliance arrangements in order to bypass the possibility of political intrusion, most notably by having the United Nations Security Council adopt a binding resolution to that effect.<sup>29</sup> The argument against this, which has so far proved persuasive, is that each case is unique, requiring a tailored, measured response. It also permits influential States and verification bodies, including their secretariats, to use their “good offices” and other diplomatic tools to try to resolve non-compliance cases before they become politically deadlocked. This works especially well in cases of inadvertent or accidental non-compliance or where failure of implementation of treaty commitments is due to lack of information or resources. One example of automaticity that has not worked well is the sanctions “snap back” procedures of the JCPOA, which are now embroiled in controversy in the United Nations Security Council.<sup>30</sup> Even if penalties for non-compliance are made automatic, it still does not make decisions about whether non-compliance has occurred any easier nor any less likely to involve politics. In fact, as in domestic legal systems, automatic penalties may make States hesitate to “convict”, knowing the severe consequences in advance.

In addition to attempting to channel politics in governing boards, treaty negotiators have also made valiant efforts to shield technical secretariats from political interference since this will, in theory, be in the interests of all member States. A politicized secretariat would lose credibility and utility. Treaty negotiators have provided legitimate ways for member States to influence the way in which their international organization’s verification and compliance system operates, giving them broad oversight through governing bodies to ensure that the secretariat is fulfilling its mandate and not overstepping it. After all, member States are funding it, and often supplying expertise and technical and material support. Delegations also have the right to meet formally and informally with the organizational head and secretariat officials, although larger, more technically competent delegations have an inherent advantage over smaller ones that deal with multiple international organizations.

Moreover, various mechanisms are also put in place to prevent micromanagement by boards, giving great latitude to secretariats to manage their operations as they see fit. This is the grand bargain that secretariats accept: in return for paying due deference to member States’ sovereign rights (and dignity), and acting professionally and impartially, they are given relatively free rein to manage themselves and their operations. Secretariat heads have the authority to recruit and appoint staff and effect organizational restructuring. Strategic plans and budgets are drafted by secretariats. They may secure extra-budgetary

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29 E.g. P. Goldschmidt, “Exposing Nuclear Non-compliance”, *Survival*, 12 February 2009, pp. 143–164, <https://doi.org/10.1080/00396330902749764>.

30 A. Smith, “Iran Sanctions: U.S. demands ‘snapback’ of measures at U.N. Security Council”, *NBC News*, 20 August 2020, <https://www.nbcnews.com/news/world/iran-sanctions-u-s-set-demand-snapback-measures-u-n-n1237417>.

funding from both State and non-state sources. Although they are not United Nations specialized agencies, the WMD bodies are members of the United Nations “family” of organizations, able to access support from the system, including a direct line to the United Nations Secretary-General.

Heads of organizations may also appoint advisory boards, commission expert reports and hire outside consultants to bolster their agency and influence. Mohamed ElBaradei, IAEA Director General between 1997 and 2009, controversially convened a Commission of Eminent Persons in 2007 to chart a course for the IAEA up to 2020.<sup>31</sup> Scientific advisory boards may be a particularly valuable way of injecting external, scientifically grounded considerations, in contrast to political ones, into the policy and management preferences of secretariats. It is notable that members of the influential Standing Advisory Group on Safeguards Implementation (SAGSI) are appointed by the IAEA Director General with the agreement of their governments, but the group advises the Director General, not the member States. The OPCW Scientific Advisory Board replicates this model. Such inputs enhance the agency of secretariats.

But no human institution can be divorced from struggles for power and influence. Secretariats may periodically find their autonomy at risk, as member States pressure them, either openly or behind the scenes, to do their special bidding. One safeguard is that conflicting member State pressures may cancel each other out. They may even result in beneficial trade-offs, creating opportunities for secretariats, headed by capable leaders, to enhance their agency and influence.<sup>32</sup> Any lack of trust that States have about the intentions of their treaty partners can create a powerful entry point for secretariats acting as disinterested, technically proficient verifiers. For secretariats, “Trust but verify” is more than a political slogan: it is an opportunity to be of service.

Non-compliance cases are, however, in a special category, testing the autonomy and credibility of secretariats like no other. During such periods, some member States seek to rein in organizational ambition and autonomy, through a governing board resolution, direct pressure on the head of the secretariat or even by seeking to influence secretariat staff directly. Saddam Hussein’s regime, as it sought to illicitly acquire nuclear weapons for Iraq in violation of its NPT obligations, even tried to plant personnel in the IAEA Secretariat in a futile attempt to spy on and counter its safeguards operations.<sup>33</sup> States accused of non-compliance invariably attack the credibility of the secretariat and their heads. IAEA Director General Hans Blix was criticized by both Iraq and the United States

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31 IAEA, Board of Governors, General Conference, “Report of the Commission of Eminent Persons on the Future of the Agency”, GOV/2008/22-GC(52)/INF/4, 23 May 2008, [https://www.iaea.org/sites/default/files/gc/gc52inf-4\\_en.pdf](https://www.iaea.org/sites/default/files/gc/gc52inf-4_en.pdf); and T. Findlay, *Unleashing the Nuclear Watchdog: Strengthening and Reform of the IAEA*, Centre for International Governance Innovation, 2012, [https://www.cigionline.org/sites/default/files/unleashing\\_the\\_nuclear\\_watchdog.pdf](https://www.cigionline.org/sites/default/files/unleashing_the_nuclear_watchdog.pdf), p. 93.

32 E.g. at the IAEA, constant pressure from developing countries for more technical assistance has been married with Western pressure for greater attention to nuclear security, resulting in more attention to nuclear security considerations in technical cooperation projects through a well-funded Nuclear Security Fund.

33 At least according to K. Hamza, *Saddam’s Bombmaker*, 2000, p. 74.

of America for allegedly being respectively too hard and too soft on the Iraqis, which may mean he struck the right balance.

What a secretariat cannot do, however, is to lose the complete confidence of a major power. If a significant member State, especially one that provides a large proportion of an organization's funding, wants something done, the organization may imperil its future by ignoring it. OPCW Director-General José Bustani discovered this when he was forced from office in 2002, one year into his second four-year term. The International Labour Organization Administrative Tribunal ultimately ruled in Bustani's favour, commenting that "the independence of international civil servants is an essential guarantee, not only for the civil servants themselves, but also for the proper functioning of international organisations".<sup>34</sup> But whether one regards the incident as political interference or justifiable dismissal on grounds of incompetence, the OPCW had, as Ralf Trapp notes, "barely survived a political as well as financial crisis of significant magnitude".<sup>35</sup> "Trust within the organization had suffered considerable damage, between groups of States Parties as well as between the Secretariat and the policy-making organs".<sup>36</sup> There are not dissimilar circumstances in national nuclear governance. National nuclear regulators are meant to be independent but are appointed by the governments that can get rid of them if displeased with their performance, as the head of the Canadian Nuclear Safety Commission discovered in 2008.<sup>37</sup> As some wit once said, "you can bite the hand that feeds you, but you can't bite it off".

The situation of the ad hoc, short-lived verification bodies is significantly different to the standing organizations. On the one hand, they are quickly assembled and tailor-made to meet a specific crisis, to some extent avoiding United Nations bureaucratic procedures and achieving immediate agency and influence because of the contingency that has brought them into being. On the other hand, they continually run the risk of having their conditional authority terminated, either when they have completed their tasks or, more often, when political controversy strikes them down. This was the fate of both UNSCOM and UNMOVIC. UNSCOM was prematurely disbanded by the Security Council because of what was perceived as too close a relationship with Western intelligence agencies.<sup>38</sup> Although from an operational perspective it made sense to recruit experts in intelligence methods to a verification organization dealing with a difficult case like Iraq, the political perceptions allowed Iraq to take advantage of the situation, leading to the worst possible

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34 International Labour Organization, Administrative Tribunal, Ninety-Fifth Session, Judgment 2232, 16 July 2003, [http://www.ilo.org/dyn/triblex/triblexmain.fullText?p\\_lang=en&p\\_judgment\\_no=2232&p\\_language\\_code=EN](http://www.ilo.org/dyn/triblex/triblexmain.fullText?p_lang=en&p_judgment_no=2232&p_language_code=EN), paragraph 16.

35 R. Trapp, "The First Ten Years", in I.R. Kenyon and D. Feakes (eds.), *The Creation of the Organisation for the Prohibition of Chemical Weapons: A Case Study in the Birth of an Intergovernmental Organisation*, 2007, p. 266.

36 *Ibid.*, p. 266.

37 CBC, "Nuclear Watchdog Head Fired for Lack of Leadership: Minister", 16 January 2008, <https://www.cbc.ca/news/canada/nuclear-safety-watchdog-head-fired-for-lack-of-leadership-minister>.

38 S. Black, 'Verification under Duress: The Case of UNSCOM', in T. Findlay (ed.), *Verification Yearbook 2000*, Verification Research, Training and Information Centre (VERTIC), 2001, pp. 115–129, [https://www.vertic.org/media/Archived\\_Publications/Yearbooks/2000/VY00\\_Black.pdf](https://www.vertic.org/media/Archived_Publications/Yearbooks/2000/VY00_Black.pdf).

fate for such a body: its abolition.<sup>39</sup> Such bodies need to move swiftly to take advantage of the political window of opportunity as long as it remains open, while instituting checks and balances to ensure the integrity of their monitoring, verification and compliance processes.

### **3.2. SECURING AND ENHANCING SECRETARIAT AGENCY AND INFLUENCE**

Despite being creatures of member States, international secretariats do have agency and influence, depending on the circumstances. They may even grow it over time, either by gradual accretion of powers or with bold purpose. All organizations have a tendency towards growth. Some occurs deliberately, while some occurs naturally with longevity. Mandates rarely shrink. Organizations rarely close bits of themselves down or abolish themselves altogether. Rather, they adapt, even re-inventing themselves, to survive and develop.

International organizations are no exception. Member States and secretariats often connive in the phenomenon. All member States make demands on their organizations, while usually being reluctant to identify which other demands should be ignored or which current activities curtailed to allow their demands to be met. The path of least resistance is just to add new tasks to existing ones without rationalization. The same phenomenon is visible in attempts to slash organizational budgets. The easiest way is to cut a certain percentage of all programmes, rather than identifying individual programmes to be trimmed or cut.

The other approach – a direct, aggressive attempt to expand agency and influence by an international secretariat – may backfire, especially in the absence of a crisis, by failing to engender the support of key member States. If reform requires treaty or statutory amendment, it risks becoming bogged down in protracted negotiations. Failure of a deliberative reform effort may even hurt the organization's credibility. Opportunistic growth may be preferable and in many cases is inevitable, providing it, too, does not arouse significant member State opposition.

Strangely, verification secretariats sometimes fail to utilize fully the powers vested in them. The IAEA has never employed the virtually "anytime, anywhere" inspection authorities set out in its statute. The only Special Inspection the Secretariat has ever carried out was in a State (Romania) that invited it to conduct one. The only time that the Director General requested one, in the Democratic People's Republic of Korea in 2003, he was refused, reinforcing long-standing reluctance to even attempt to use this tool. Until the Iraq case revealed the shortcomings of its approach, the IAEA did not seek to entirely fulfil its NPT mandate to ensure that all nuclear material in peaceful uses, including undeclared material, was accounted for.<sup>40</sup>

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39 R. Butler, *Saddam Defiant: The Threat of Weapons of Mass Destruction and the Crisis of Global Security*, 2000, pp. 233–235.

40 H. Blix, *Disarming Iraq: The Search for Weapons of Mass Destruction*, 2005, p. 18.

Apart from shielding secretariats from undue political interference, a challenge for States is to know how much organizational autonomy to grant to a verification secretariat so it can perform effectively and efficiently, how much to permit it to improve its capabilities over time and, most importantly, when to rein it in. "Mission creep" is seen by member States as especially insidious. From the secretariat's point of view, beyond warding off unwanted political interference, the challenge is to preserve, or better still expand, its autonomy and constantly improve its technical capabilities, while maintaining and even increasing support from member States.

Naturally, when such bodies are first established, they have, in accordance with their official mandates, agency and influence on paper. The secretariats of all the WMD organizations were initially shaped by highly motivated individuals dedicated to the disarmament cause, who had helped negotiate their foundational treaties, often as members of national delegations or scientific advisors. This also gave the organizations an initial boost in agency and influence. But organizations may quickly find themselves in a struggle to realize their foundational aspirations. The IAEA in its early years risked being sidelined as it competed with the safeguards system of the European Atomic Energy Community (Euratom) and bilateral technology deals between States. The NPT vastly expanded the IAEA's responsibilities, rescued it from irrelevance, and hence broadened its agency and influence overnight. After the euphoria of its establishment after decades of struggle, the early years of the OPCW Technical Secretariat also exhibited relative inertia, brought about by a developing "culture of deferral" of decisions and the persistence of unresolved issues from the OPCW Preparatory Commission. The Executive Council also sought to micromanage the Technical Secretariat, contributing to a financial crisis only four years after the organization's creation.<sup>41</sup>

As the political scientist Robert Wood has explained, "International organization is retrospective – reflecting historical clashes of power and interest and the political perceptions related thereto".<sup>42</sup> But it is also "a process that like any organism must change in response to its environment".<sup>43</sup> Multilateral bodies "operate in part by shaping the environment in which states exist, the interests and goals states have, and the background sense of what is reasonable and normal in international politics".<sup>44</sup> This norm-building function is common across all three WMD bodies and represents their most potent tool for wielding influence. A prime example is the CTBTO's Provisional Technical Secretariat, which from the outset promoted itself as the organizational embodiment of the international norm against nuclear testing. The IAEA, too, has long advertised itself as a significant contributor to international peace and security, even employing the "nuclear watchdog" moniker it has sometimes derided. The OPCW Technical Secretariat sees itself not just as the embodiment of a long-standing taboo against chemical weapons but as

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41 A. Kelle, "The First CWC Review Conference: Taking Stock and Paving the Way Ahead", *Disarmament Forum*, no. 4, 2002, pp. 3–9, [https://www.peacepalacelibrary.nl/ebooks/files/UNIDIR\\_pdf-art1821.pdf](https://www.peacepalacelibrary.nl/ebooks/files/UNIDIR_pdf-art1821.pdf), p.7.

42 R. Wood, "The Nature and Development of International Organization", Introduction, in R. Wood (ed), *The Process of International Organization*, 1971, p. 1.

43 *Ibid.*, p. 1.

44 I. Hurd, *International Organizations: Politics, Law, Practice*, 2nd ed., p. 6.

one of the last repositories of knowledge of the historic scourge of chemical weapons. It was the OPCW Director-General who decided to establish a Fact-Finding Mission (FFM) in the Syrian Arab Republic to investigate all chemical weapon use, regardless of the actor, thereby strengthening the norm against any use of chemical weapons anywhere, by anyone.

Beyond normative activism, principal-agent theory illuminates other ways in which, over time, the secretariats of WMD organizations may increase their agency and influence. The theory posits that an agent (in this case the secretariat of a WMD organization) receives conditional authority from a principal (in this case the member States) to carry out its will. But “this defining characteristic does not imply that agents always do what principals want”.<sup>45</sup> Even without deliberate, negotiated attempts to change the original arrangement between principal and agent, which occasionally happens, it is inevitable that the original deal will change with the passage of time. Invariably, the conditional authority will tend to become permanent and indispensable as the agent grows and develops. As the experience of WMD-verification organizations accumulates and technology advances, so does the reliance of member States on their “services”. Ian Hurd reminds us that international organizations have three roles – as actor, forum and resource<sup>46</sup> – all of which can be exploited in the service of mission enhancement and increased agency and influence. Their convening power alone can be compelling: States hate to be left out of any international gathering.

The secretariats of the IAEA, the OPCW and the CTBTO have all grown in both size and complexity and their technical and analytical capabilities have all advanced, in some cases dramatically, since they were established. Growth has partly been driven by increasing membership as, over time, all States seek to join all international bodies. New groupings of member States, notably the Non-Aligned Movement (NAM), an enlarged European Union (EU) and other regional and subregional groups have provided new opportunities for secretariats to enhance their agency and influence. The EU has, for instance, become a major source of new voluntary funding through the European Commission’s WMD non-proliferation programme. The Association of Southeast Asian Nations (ASEAN) and its associated regional bodies are increasingly recognized as an additional conduit for the IAEA to deliver its messages emphasizing the importance of the Additional Protocol and enhanced nuclear security.

Faced with competing demands, secretariats can either simply accept them all or, more cannily, trade them off against each other. Either way the result is invariably an expanded mandate, not a shrunken one. The late IAEA Director General Yukiya Amano deftly accorded high priority to the concerns of developing countries, including cancer treatment and other peaceful uses of nuclear technology, presumably not just to ensure his re-election, but to bolster membership support for the Agency in its overall mandate,

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45 D.G. Hawkins et al., “Delegation under Anarchy: States, International Organizations, and Principal-Agent Theory”, in D.G. Hawkins et al. (eds.), *Delegation and Agency in International Organizations*, 2006, pp. 3–38. <https://doi.org/10.1017/CBO9780511491368.002.p.8>.

46 I. Hurd, *International Organizations: Politics, Law, Practice*, 2nd ed., 2014, pp. 28–36.





*Mohamed ElBaradei, Director General of the International Atomic Energy Agency (IAEA), addresses the Security Council Summit on nuclear non-proliferation and disarmament.*

including safeguards. The long-standing trade-off between safeguards funding in the regular budget and voluntary Technical Cooperation has resulted in increases in both. Although the budgets of all organizations in the United Nations family have been held to zero real growth for decades (the IAEA is an exception), organizational growth has still occurred due to inflation, cost-saving (especially as the cost of information technology and other technologies has dropped) and voluntary contributions. Along with cost-free experts provided by States, voluntary financial contributions can be useful in meeting capacity shortfalls and special needs. However, they risk accusations that the providers are pursuing their own agendas and influence at the expense of the organization's priorities. A wide variety of sources of assistance, particularly from different geographical and political groupings, helps attenuate this problem.

### **3.3. UTILIZING CRISES AS WINDOWS OF OPPORTUNITY**

A notable way in which international organizations may carve out greater autonomy and an expanded mandate is to exploit international crises. Paradoxically, non-compliance crises especially can be used by secretariats, if they are deft enough, to strengthen their capabilities and ultimately agency and influence.

There are several examples in the IAEA's history where this has occurred. The cases of Iraq, South Africa, the Democratic People's Republic of Korea and the Islamic Republic of Iran each, in its own fashion, led to the strengthening of safeguards. In the Iraq case, the outcome was the 93+2 programme of systematic strengthening of safeguards, as well as the crafting of the Additional Protocol. The Iraq Action Group and the Iran Task Force

were both special verification groups set up within the Secretariat to enhance verification focus and capacities for each case. Each inevitably produced a legacy of innovation and capability that has benefited the wider safeguards mission of the Agency. The Agency and Director General Mohamed ElBaradei were awarded the Nobel Peace Prize in 2005 for their work in Iraq, enhancing the prestige and, arguably, the agency and influence of the organization.

The Chernobyl and Fukushima crises in 1986 and 2011, respectively, led the Agency to expand its role in nuclear safety. The 11 September 2001 terrorist attack on the United States of America, even though it was non-nuclear, enabled the IAEA to significantly strengthen its role in nuclear security. In each instance the strengthened mandate occurred with the agreement or acquiescence of most member States. But the IAEA Secretariat, long interested in expanding its roles in all these fields, was prepared for change and often took the initiative. In some cases, the Secretariat acted without specific Board approval by quietly tweaking existing practices and procedures.

As to the OPCW, concern over the use of toxic chemicals in the Syrian Arab Republic and questions over the latter's chemical weapons declaration resulted in the OPCW Director-General establishing two ad hoc mechanisms: the FFM and the Declaration Assessment Team (DAT). As Trapp notes, both "were agreed bilaterally with the government of Syria and subsequently endorsed by the Executive Council".<sup>47</sup> Although avowedly established without setting a precedent, it is possible that in an analogous situation the OPCW could utilize these tools again.

At the CTBTO the Executive Secretary and Provisional Technical Secretariat used nuclear tests by the Democratic People's Republic of Korea to demonstrate the technical capacities of its verification system. It reported its findings publicly, even though the Democratic People's Republic of Korea has never signed the CTBT and could not therefore even be accused under customary international law of acting to undermine its purposes. The Secretariat was able to act because the Democratic People's Republic of Korea lacked allies and had clearly violated United Nations Security Council demands and a growing norm against nuclear testing. The Secretariat nonetheless took advantage of the situation to enhance its agency.

Even natural disasters can be levered to increase agency and influence in a constituency not identified when the organization was founded. The 2004 Indian Ocean tsunami was viewed by the CTBTO's Provisional Technical Secretariat as an opportunity to demonstrate the value of its remote monitoring capabilities in early warning. The CTBTO's deft promotion of the utility of the IMS for scientific and emergency purposes has helped to secure continued funding and has engaged additional stakeholders, such as scientists, the emergency preparedness and response community, NGOs, and aid agencies in the future of the organization.

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<sup>47</sup> R. Trapp, *Compliance Management under the Chemical Weapons Convention*, WMD Compliance & Enforcement Series no. 3, UNIDIR, 2019, <https://doi.org/10.37559/WMD/19/WMDCE3>, p. 19.

Yet an incident from 30 years ago illustrates the fine line that WMD organizations tread. In 1991 the United States of America hesitated to allow the Security Council to entrust the IAEA with verifying the dismantlement by Iraq of its nuclear capabilities. It feared that Iraq and its allies on the IAEA Board of Governors might interfere in compliance conclusions and that the IAEA Secretariat may not be vigorous enough in pursuing verification.<sup>48</sup> The compromise, more face-saving than real, was to place the Iraq Action Team under the personal authority of IAEA Director General Hans Blix. Paradoxically, this showed surprising confidence in his “agency”, if not his Agency, notwithstanding previous criticisms of his allegedly “soft” approach to Iraq. This incident shows that, despite attempts to protect governance arrangements and the autonomy of a secretariat, both risk being overturned and superseded by political expediency when extraordinary circumstances arise. It also illustrates the degree of agency and influence that the IAEA had secured over the years as the only standing international body that could undertake credible nuclear inspections in Iraq and supervise and verify Iraqi dismantlement of its capabilities.<sup>49</sup>

### **3.4. CREATIVE, CRAFTY LEADERSHIP**

Taking advantage of crises to increase an organization’s agency and influence, as well as successfully steering it through its day-to-day operations, requires leadership that is skilled, politically astute, creative and crafty. These attributes can make the difference between success and failure.

IAEA Director General Hans Blix’s reaction to the Iraq non-compliance case in 1991 is a classic case of good leadership. Rather than defending the indefensible – the Agency’s failure to detect Iraq’s blatant violations – he perceived that he could use the discrediting of the old safeguards system to build a better one. Using the window of opportunity, he quickly proposed to the Board strengthening measures that could be taken immediately under the Agency’s existing authorities and a two-year programme of more substantial changes. Blix then successfully steered them through to implementation before the window closed, as such windows inevitably do when member States opposed to change regain their footing. In 1993 Blix, on his own initiative, also took a firm line with the Democratic People’s Republic of Korea: for the first time he used intelligence information from member States and satellite imagery in a closed-door presentation to the Board to make the case for declaring the country to be in non-compliance.<sup>50</sup>

An unfortunate contrast was the IAEA leadership’s response to the 2011 Fukushima disaster. It appeared to not to see its role as being to provide immediate information, reassurance and assistance to member States, as they were expecting and demanding, but rather as being to assess the longer-term impacts and what might be done to avoid such

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48 G. Harrer, *Dismantling the Iraqi Nuclear Programme: The Inspections of the International Atomic Energy Agency, 1991-1998*, 2014. pp. 28-34.

49 Albeit in cooperation with UNSCOM and UNMOVIC and drawing on talented inspectors from nuclear weapon states to avoid IAEA personnel from non-nuclear weapon states accessing information relating to nuclear weapons.

50 M. ElBaradei, *The Age of Deception: Nuclear Diplomacy in Treacherous Times*, 2011, p. 42.

occurrences in future.<sup>51</sup> This was a missed opportunity that could have both caused long-term damage to the IAEA's credibility and deprived it of agency and influence. Ultimately, the Secretariat rose to the occasion by producing voluminous technically impressive reports on the disaster and recommendations for remediation and preventative action.<sup>52</sup>

### 3.5. SUSTAINING SCIENTIFIC AND TECHNICAL EXCELLENCE

The credibility of an international verification organization depends not just on political support and leadership but on its scientific and technical reputation. In the current era of "fake news", where even the slightest lapse in technical judgement can be seized upon – the World Health Organization's alleged hesitation in declaring COVID-19 a pandemic in January 2020 is a good example – it is even more vital that scientific and technical excellence be pursued. Director General Yukiya Amano clearly perceived this in doggedly pursuing modernization of the IAEA's Seibersdorf Laboratories through a targeted fundraising campaign. If the laboratories could not demonstrate state-of-the-art capability and a commitment to safety and security that matched what the Secretariat expected of member States, then its credibility would be at risk. This is echoed by the OPCW's Centre for Chemistry and Technology project. The IAEA, CTBTO and the OPCW have, in addition, set up international networks of laboratories to provide independent analysis in support of credible verification findings. The OPCW has sought to broaden the geographical spread of its network to assuage concerns about political bias.

Multilateral verification secretariats also need to be able to recruit highly qualified scientific and technical staff and keep their expertise current through training and interaction with the global scientific community. Unfortunately, the three organizations' seven-year staff "rotation" system mitigates against the creation of a permanent, full-time verification cadre and needs reform.<sup>53</sup> While designed to prevent international bureaucracies becoming hide-bound, inefficient and self-serving and to open up participation to nationals of all member States, such a model is inappropriate in an era when creating and sustaining human capital is essential for a scientific mission such as monitoring and verification. Constant rotation of staff may weaken an organization's ability to enhance its agency, partly because its effectiveness and efficiency may be degraded, but also because it gives knowledgeable member States opportunities to take advantage of such disruptions in continuity and institutional memory.

Modern management methods can prevent the ossification of international organizations as much as they can for corporations. One way is to ensure continuing training and skill upgrades for staff and opportunities for career advancement.

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51 T. Findlay, *Unleashing the Nuclear Watchdog: Strengthening and Reform of the IAEA*, Centre for International Governance Innovation, 2012, [https://www.cigionline.org/sites/default/files/unleashing\\_the\\_nuclear\\_watchdog.pdf](https://www.cigionline.org/sites/default/files/unleashing_the_nuclear_watchdog.pdf), pp. 27–28.

52 IAEA, "The Fukushima Daiichi Accident: Report by the Director General", GC(59)/14, 2015, <https://www-pub.iaea.org/MTCD/Publications/PDF/Pub1710-ReportByTheDG-Web.pdf>.

53 While the OPCW rigidly enforces this rule, at the CTBTO and the IAEA former staff members can be rehired and have their tenure clock reset after a 1-year break from the organization. This is a disruption unknown in other types of organization.

### 3.6. ASSISTING STATES TO ACHIEVE COMPLIANCE

A further powerful way for verification organizations to enhance their agency and influence is to redouble their efforts to assist member States in implementing their treaty obligations. For many years, in conceptualizing the role of international disarmament and arms control agreements, the challenges of monitoring and verification were emphasized, to the neglect of encouraging, assisting and overseeing self-monitoring and self-regulation by States. All three of the standing WMD bodies now have active programmes to help States to bolster their national implementation, routinely providing model legislation, legal advice and workshops on implementation. The IAEA has in recent years accorded new prominence to the traditional State Systems of Accounting and Control (SSACs) and Regional Systems of Accounting and Control (RSACs) as a means of boosting the robustness of nuclear safeguards. Since its inception, the OPCW has stressed the need for strong national implementation. One of three branches in its International Cooperation and Assistance Division supports this work. The idea has even migrated to the BTWC, which lacks a standing verification organization, but which now has an Implementation Support Unit (ISU).<sup>54</sup>

This emphasis has, perhaps surprisingly, strengthened the international bodies as much as States, as most of their “clients” require assistance and advice in effecting improvements. Emphasis on a State’s responsibility for demonstrating its compliance rather than simply relying on external verification is a force multiplier in enhancing secretariat agency and influence.

### 3.7. UTILIZING KNOWLEDGE AS POWER

A powerful, underappreciated, source of agency and influence is knowledge. Principal-agent theory illuminates what can occur: over time the agent becomes more knowledgeable and expert than the principal; the dependence of the principal on the agent increases, sometimes irretrievably.

A powerful example is that most member States of the CTBTO choose not to receive all the voluminous data generated by the IMS as they do not have the capacity to receive or analyse it. This leaves a small number of States and the Provisional Technical Secretariat as the sole users and analysts. Only the Secretariat has access to all the historical data and all the data from the various monitoring technologies in real time, rendering most member States completely dependent on international civil servants. In the IAEA case, it knows far more about safeguards than most of its member States, whether in capitals or in their ever-changing delegations in Vienna (which are also usually responsible for following developments in the multiple international organizations to which they are accredited). Few member States can pay detailed attention to the activities of international secretariats. Most are developing countries with other priorities, and so they rely on group caucusing to provide them with the basic facts and suggested positions. Few delegations have the time or inclination to read voluminous budget documents, audited accounts and technical reports.

<sup>54</sup> United Nations Office at Geneva, “Implementation Support Unit”, [https://www.unog.ch/80256EE600585943/\(httpPages\)/16C37624830EDA5C12572BC0044DFC1?OpenDocument](https://www.unog.ch/80256EE600585943/(httpPages)/16C37624830EDA5C12572BC0044DFC1?OpenDocument).

Secretariats also have access to privileged information. Confidential safeguards material is out of bounds to member States under the legal requirements of the IAEA Statute. Confidentiality requirements at the OPCW also give the Technical Secretariat privileged access to information. In addition, the member State delegations that helped set up WMD organizations have long moved on and few states have institutional memory about their origins. Such factors offer the potential – if not the actuality – of the agent outpacing the principal.

On the other hand, staff turnover in secretariats, whether through a tenure policy, natural attrition or bulk retirements after earlier recruitment spikes, means that not only does the principal change hands over time but also the agent. At the OPCW, staff turnover has reportedly been higher due to the more rigid enforcement of the seven-year rotation rule, resulting in the loss of organizational memory built up since the organization's establishment. At the IAEA, a whole generation of inspectors is scheduled to retire in the coming years, again depleting the institutional memory, at least as it is retained by staff. Hence, lessons-learned exercises, effective staff debriefing and handover, and an efficient archival service are important. All of this reminds us that the principal–agent relationship is never static but can evolve in beneficial or deleterious directions.

Verification organizations can enhance agency and influence by taking active steps to preserve their institutional memory and ensure that successive generations of personnel absorb lessons learned from the past. None of the three major organizations has been adept at this. At the IAEA, a specific challenge has been retaining knowledge generated by cost-free experts provided by member States if they leave without a proper handover. Even long-service staff members have not been effectively debriefed or encouraged to reflect on their years of service before they depart. Efforts by the Pacific Northwest Laboratories and academic bodies such as the University of Vienna and the Yale University United Nations Oral History Project to preserve oral history are invaluable but insufficient. The OPCW is also aware of this challenge and recently appointed a P5 Knowledge Management Officer to address it.

### **3.8. COLLABORATION WITH SUPPORTIVE STATES, OTHER MULTILATERAL ORGANIZATIONS, INDUSTRY AND CIVIL SOCIETY**

The institutional health of international secretariats also depends on the determination of influential member States to be their champions and to act as policy “entrepreneurs” in countering spoilers and apathy among the rest of the membership. Medium-sized, “middle” powers, which view international organizations as enhancing their own influence in international affairs, can play an outsized role in ensuring institutional well-being as “Friends of the Secretariat”.

A further vital way for an international organization to enhance its agency and influence is to expand the range of its external stakeholders. Collaboration with other organizations in the United Nations system can be particularly effective, bolstering the authority and resources of them all. The IAEA has numerous collaborations with other United Nations agencies, including the Food and Agriculture Organization (FAO), the Nuclear Energy Agency of the Organisation for Economic Co-operation and Development (OECD) and

the World Health Organization (WHO). Crises can be a useful stimulant to collaboration. In 2011, the IAEA and the CTBTO quickly reached agreement on the Agency gaining access to IMS data on the nuclear plume emanating from the Fukushima Daiichi nuclear reactors, a collaboration hitherto not deemed politically feasible.<sup>55</sup>

Collaboration with the scientific community can be especially fruitful, especially when it takes place without political interference. Since monitoring and verification should be based on sound science and strict technical criteria, secretariats should have access to the latest scientific and technological advances. The IAEA's Scientific Advisory Committee (SAC), comprised of influential scientific luminaries, was replaced in 1988 by small specialist advisory groups on different IAEA programmes.<sup>56</sup> It may be worth reviving this body for the high-level advice and support it can give to the Director General and Secretariat and to counter the tendency towards departmental stove-piping that can lessen overall agency and influence. The CTBTO and the OPCW have also from the outset sought to involve scientists in their work: provision for a Scientific Advisory Board was built into both the CWC and the CTBT.

Unlike the OPCW, which received industry support from its inception and continues to foster a relationship with industry,<sup>57</sup> the IAEA has tended to regard States as its sole clients. This has meant that it has neglected other potential collaborators, including NGOs and industry groups, that may help protect its autonomy. All the WMD secretariats have sought to carefully manage relationships with civil society, especially with NGOs that are perceived as advocacy groups. Certain member States, usually those with problematic domestic relations with NGOs, oppose close ties with NGOs altogether. Yet, if sensitively handled, support from civil society can be a significant source of agency. The CTBTO benefits greatly from global NGOs that support a universal ban on nuclear testing. Such entities can also be a source of material assistance, including funding, in situations when members decline to provide it. An example is the provision by the Nuclear Threat Initiative (NTI), an NGO, of \$50 million for the IAEA Nuclear Fuel Bank in Kazakhstan.

### **3.9. CULTIVATING AN APPROPRIATE ORGANIZATIONAL CULTURE**

One commonly neglected element in the vitality of international organizations is organizational culture, particularly among inspectors, analysts, and managers of verification and compliance arrangements. Over many years IAEA inspector culture evolved into one that undervalued inquisitiveness, while emphasizing box-ticking and routine inspection activities. It focused entirely on declared materials and sites, while ignoring what had always been part of the IAEA's mandate – to concern itself with undeclared nuclear materials and activities.<sup>58</sup> This led to the Agency's failure to detect Iraq's construction of an illicit nuclear fuel cycle in plain sight of IAEA inspectors. Verification organizations, especially

55 CTBTO, "IAEA & CTBTO Sign Practical Arrangement on Nuclear Emergencies", 30 June 2016, <https://www.ctbto.org/press-centre/news-stories/2016/iaea-ctbto-sign-practical-arrangement-on-nuclear-emergencies/>.

56 D. Fischer, *History of the International Atomic Energy Agency: The First Forty Years*, IAEA, 1997, p. 83.

57 A formal consultative mechanism for chemical industry representatives and the Secretariat has been established. See OPCW, "Our Partners: Working Together for a World Free of Chemical Weapons", <https://www.opcw.org/about-us/our-partners>.

58 T. Findlay, "IAEA Safeguards Culture: Origins, the Iraq Case and Future", forthcoming.

those designed to exist in perpetuity, must be alert to the dangers of complacency, over-confidence, cognitive dissonance and “groupthink”. Dealing with these risks is almost entirely within the control of organizational leaders who set the cultural tone from the top. Without an appropriate organizational culture, international secretariats can lose focus and effectiveness, resulting in the deterioration of agency and influence.

An appropriate organizational culture for a verification organization will nurture its impartiality, objectivity and independence, affirm the legitimacy of international law, value and reward scientific and technical excellence, support States’ implementation of and compliance with their treaty obligations, and disdain inappropriate political interference in the monitoring and verification mission. Enhancing organizational culture has not yet been part of the management approach of any of the three major verification secretariats, despite the advocacy of nuclear safety culture and nuclear security culture by at least one of them, the IAEA.<sup>59</sup>

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<sup>59</sup> T. Findlay, “The IAEA’s Nuclear Safeguards Culture: ‘Candy Concept’ or Powerful Prism?”, Presentation to IAEA Safeguards Symposium, Vienna, 21 October 2014, <https://www.belfercenter.org/sites/default/files/files/publication/findlay-nuclear-safeguards-culture-slides.pdf>.



## 4. CONCLUSIONS

The challenge for supporters of international verification organizations, notably member State champions and entrepreneurs, is to enhance those elements that give agency and influence to these organizations and minimize those that lead to inefficiencies, dysfunctionalities and, most damaging of all, political interference in verification and compliance judgements. Executive boards need to recognize that a robust, impartial, technically capable secretariat is in the interests of all member States and provide them with the requisite political, financial and technological support.

Radical strengthening of an organization often depends on a political window of opportunity where resistance falls away because of the urgency of the situation. Supportive member States and secretariats need to be alert to such opportunities, especially to rectify deficiencies that have long been obvious but have been blocked by political considerations or overcautious member States. In normal circumstances a direct, overambitious approach to expanding agency and influence may backfire, as it runs the risk of failing to engender the support of all member States. Gradual reform may be preferable, and in many cases it is inevitable, providing it, too, does not arouse significant opposition from member States. Naturally, international organizations need to stay within the bounds of their mandates, but they still have considerable leeway in achieving agency and influence. Skilled, politically astute leadership can make all the difference.

Meanwhile, there are numerous ongoing ways in which a verification secretariat can position itself for maximum agency and influence: engaging with multiple stakeholders, striving for excellence in its human and technical resources, making itself indispensable to member States through implementation assistance, ensuring an appropriate organizational culture and, perhaps most of all, understanding that knowledge is power.

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