

Dispute Settlement

The Agency has a general dispute settlement mechanism provided in its Statute, and also makes provision in its safeguards guidelines for the settlement of disputes arising out of its safeguards functions. Both of these provisions should be studied. A particular problem is how to preserve the ability of the Agency to obtain information, to draw conclusions and to act while also protecting the rights of states. This consideration could be important, especially for a regime of challenge inspections. Further, Fischer and Szasz point out that the dispute settlement mechanism has been used to impede the improvement of safeguards.⁶ These general legal difficulties should be noted.

Internal Functioning

Political Structures

The development of the safeguards function in the IAEA is connected to both the characters of and the relationship between its two political organs, the General Conference and the Board of Governors. The Agency's Statute assigns rather general and weak powers to the General Conference. The Board is the central organ of the Agency, carrying out its functions, including important powers with respect to safeguards. Budgets, reports to the United Nations, the appointment of the Director General and some other activities require the agreement of the General Conference, but the Board retains among other things apparently sole rights to approve of upper-level staff appointments by the Director General (including of inspectors), to approve of safeguards policies and agreements, and to decide and act in cases of feared or actual non-compliance.

Given this centrality, the attitude of the Board— thus its composition— has been important. The development of the Agency's pre-NPT system depended on strong Western efforts on the Board, while the U.S.S.R. and its allies have more recently become strong supporters of safeguards. In general, the advanced, non-Third World, nuclear states on the Board have been supportive of safeguards. The rules of composition of the Board, which take nuclear technological or supply status into account as well as geographic distribution, have tended to favour these states — certainly in the early days of the Agency and even now relative to the General Conference despite the expansion of the Board and the increase in its elected component. One should note, then, both the expansion of the Board as the number of Agency members has increased, and the larger elected component, together with continuing pressures for a revision of the Statute Article on the Board. Clearly, several states are unhappy with the present state of affairs.