

Constraints on Agency Safeguards Rights

The Agency's safeguards are applied through a chain of agreements with the safeguarded state, from the broadest agreement authorizing the application of safeguards, through an agreement on safeguards themselves, down to more detailed subsidiary and facility-level arrangements. In the process of operationalizing the safeguards through this chain, the Agency's safeguards activities become more specific than the general rights granted in the broad safeguards agreements. In some cases, this process may create additional constraints on the Agency's rights.

An example of this is found in the application of certain INFCIRC/153 safeguards agreements. Unlike the INFCIRC/66 system, which limits the Agency to a maximum number of inspections per year for various types of facilities, the INFCIRC/153 system applies limits to the number of man-days of inspection per year (the Maximum Routine Inspection Effort). In its subsidiary arrangements, the Agency will usually specify its Actual Routine Inspection Effort (ARIE), a smaller number. Japan and EURATOM have insisted on taking the ARIE figure as the actual maximum.⁵ Since the Agency cannot produce even its planned ARIE, it is not clear that these constraining efforts materially affect its safeguards. The example, however, should be noted.

Sanctions

The IAEA has very limited sanctioning powers for a violation of compliance obligations. The Agency can end co-operation with a state in violation and suspend or expel it if it is a member. Its most effective sanction is the power to publicize — to report an inability to verify compliance to its members, to the United Nations, and to the world in general. Effective sanctions beyond this one depend on the reaction of the international community and of key states within it.

It is hard to imagine any verification agency realistically having more significant sanctioning powers than those of the Agency. It is, moreover, arguable that the enforcement function should be divorced from the verification function, the latter being primarily a process of collecting and assessing information. If non-compliance is detected, the more politically charged process of determining what to do about it then emerges. In the example of the Agency, an informal process of diplomatic pressure seems to operate effectively, as concerns about anomalies move toward the political level.