

a standardized compliance reporting mechanism for all NPT state parties²³ even this modest idea has not met with the approval of the NWS.

In the NPT compliance is also only implied in respect of nuclear safeguards which the treaty delegates to the IAEA. However the IAEA Statute establishes that the compliance body within the Agency is the Board of Governors. Both the Statute and safeguards agreements stipulate that if states violate their safeguards agreements with the Agency the Director-General can refer the case to the Board for 'appropriate action'.²⁴ The Board may also order the state to take certain action if it deems verifiability to be in jeopardy or if the Agency finds itself unable to verify compliance.²⁵ If it finds a state in possible or actual non-compliance with its safeguards agreement with the Agency it may take certain action, such as seeking clarification, complementary access (under the Additional Protocol), a special inspection or punitive action such as the suspension of technical assistance and/or other membership privileges. However, the most powerful sanctions may only be imposed by the UN Security Council, to which the Board of Governors may send a compliance case. One oddity is that the Board of Governors is able to judge non-compliance with agreements to which the IAEA is itself a party.

The compliance role of the IAEA is complicated by the fact that the Agency's membership does not coincide with NPT membership. Non-NPT parties India, Israel and Pakistan are all IAEA members, indeed founder members in 1957, and all have the opportunity to serve on the Board of Governors, as India has done continuously.²⁶ This leads to a surreal situation in which compliance with a treaty is judged by states which themselves have not assumed such obligations. Another difficulty is that states may remain on the Board of Governors even when their non-compliance is being considered, as has occurred in the case of Iran. The US has proposed that states which find themselves in such a situation be suspended from Board membership.

The compliance record of the IAEA has been mixed. In the case of Iraq it missed Iraq's original violations but was then accorded a pivotal role in ensuring Iraq's compliance with its disarmament obligations after the first Gulf War in cooperation with UNSCOM and UNMOVIC. Director-General ElBaradei was outspoken both in publicly assessing the extent of Iraq's compliance in the nuclear area and in rebutting unsubstantiated allegations of non-compliance. In the North Korean case it was the Agency which, with assistance from other states, detected and confirmed North Korea's non-compliance. However further action was then taken out of its hands (and out of the Security Council's) and dealt with through a North Asian multilateral framework. In the case of Libya, the Agency missed the evidence of non-compliance (in the absence of the extra tools that an Additional Protocol would have provided), but has, after an initial US/UK attempt to sideline it, been fully involved in assessing Libyan non-compliance ever since Libya made its admissions public.

²³ See 'Reporting by States Parties: Working Paper submitted by Canada', NPT/CONF.2005/PC.1/Wp.3, 9 April 2002.

²⁴ 'The structure and content of agreements between the Agency and states required in connection with the Treaty on the Non-Proliferation of Nuclear Weapons', IAEA document INFCIRC/153, Vienna, 1971, para. 9.

²⁵ INFCIRC/153, paras 18-19.

²⁶ North Korea was also a member until it withdrew in June 1994.