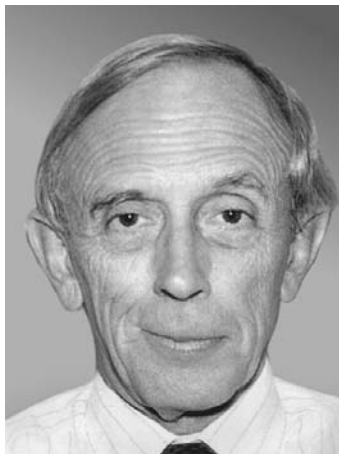


SAFEGUARDS AND THE IAEA
BOARD OF GOVERNORS:
1991–1993

*Iraq, a Necessary Stimulus
for Handling the DPRK*

Michael Wilson



Michael WILSON is a former Australian diplomat. He served in six countries, became a senior officer in the Australian Department of Foreign Affairs and Trade and Head of Mission in former Yugoslavia, Romania, Bulgaria and Papua New Guinea; and Permanent Representative to the United Nations in Vienna from 1988 to 1993, as well as Ambassador to Austria, Slovenia and Croatia. He was the Australian representative to the IAEA and the Board of Governors. In retirement he writes and lectures on international relations and has undertaken assignments in Central and Eastern Europe for the Australian Government.

THE CHALLENGE OF IRAQ

It is now axiomatic that an intrusive inspection system is required to provide international assurance against the misuse or diversion of materials capable of being used to manufacture weapons of mass destruction. The START 1 and 2 Treaties, the Chemical Weapons Convention and the agreement on conventional forces in Europe, which were concluded in the last decade, incorporate systems of inspection which reflect the changes in attitude and policy since the IAEA pioneered a safeguards system in the late 1950s. When the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), whose principal purpose was to prevent the spread of nuclear weapons capability, entered into force in 1970 all non-nuclear-weapon States parties to the Treaty were required to accept comprehensive safeguards on their nuclear materials and to conclude a comprehensive safeguards agreement with the Agency. The executive council of the Agency, the Board of Governors, agreed in 1971 to the "structure and content" of the agreement.¹ The essential purpose of the agreement is to account as accurately as possible for all nuclear material under safeguards by tracking this material in the country "as it flows into, through or out of the national fuel cycle".² The agreement provided for regular accounting, physical inspections and instrumental surveillance and included a provision for a special inspection should the Agency have cause to believe that the information provided did not permit it to fulfil its responsibilities. This provision was not used in relation to suspected undeclared material until the case of the Democratic People's Republic of Korea (DPRK, or North Korea) in 1993.

From the early 1970s for about two decades the system was not called seriously into question. The Agency had been able to report annually to its Board of Governors that, with three exceptions in the early 1980s, there had been no diversion of nuclear materials from peaceful to military purposes. Confidence in the probity and reliability of the safeguards system grew and an increasing number of non-nuclear-weapon States became parties to the NPT as they recognized that their essential security interests were best served by renouncing the option of nuclear weapons. The verification system was not

¹ This is contained in the Agency's Information Circular No. 153, known as INFCIRC/153.

² FISCHER, D., *Towards 1995: The Prospects for Ending the Proliferation of Nuclear Weapons*, UNIDIR, Dartmouth Publishing, Aldershot (1993) 237.

infallible and a determined proliferator could — as in the case of Iraq — circumvent the system spectacularly. However, while Member States abided by the rules there was general public and Member State confidence in its efficacy.

After the Gulf War, the discovery of the full extent of Iraq's nuclear capability, which had not previously been revealed through Agency inspections, severely damaged the IAEA's reputation and international confidence in the safeguards system. The UN Special Commission for Iraq was established by the Security Council in 1991, led by Ambassador Rolf Ekeus, to search for evidence of Iraq's advanced capability for the manufacture of chemical and biological weapons and intermediate and long range missiles. The Security Council similarly asked the IAEA to map Iraq's nuclear capacity and to destroy, remove or render harmless the components of its nuclear weapon programme.

The revelations and findings of the IAEA of the evidence of Iraq's advanced nuclear capability, which had been acquired secretly, stimulated understandable fears and critical judgements of the quality of the Agency's verification system. Safeguards were held to be unreliable and, in the enthusiasm to find an obvious and relatively defenceless scapegoat, the Agency was perceived to be complacent and unobservant. The limitations on safeguards inspections, whose principles had been agreed by governments, were either disregarded or apparently not understood.

When Iraq joined the NPT in 1969 it concluded the required safeguards agreement (in 1972) with the Agency accounting for its entire nuclear inventory, which Iraq was required to declare and which was thereafter routinely inspected by the Agency. Its clandestine programme began later. The equipment and materials concerned were not added to the Iraqi nuclear inventory, as required under the agreement, and were consequently never inspected. The Agency had confined its inspections to the nuclear material in the facilities 'declared' in the inventory and had had no apparent cause to seek to inspect others.

This was a major cause of criticism when the clandestine programme became known. Why had the Agency not sent inspectors around Iraq to make random, spot checks at uninspected sites? This criticism took little or no account of the tightly controlled nature of the Iraqi regime, a condition now well understood. Agency inspectors are not international police. While the IAEA can require a 'special inspection' if it considers that the information provided by the State is deficient, its inspectors have no powers to search and enter without authority. Any such demand would have been resisted by Iraq and perceived by other members of the Agency as a political act and would have required at least the authority of the Agency's governing body — the

Board of Governors — and possibly also the support of the UN Security Council. I believe it is very questionable whether, even if the Agency had raised doubts about the Iraqi programme in the 1980s, there would have been sufficient support for special inspections given the political positions of some major powers then towards Iraq. Iraq was at war with the Islamic Republic of Iran from 1980 to 1988 and some of the permanent members of the Security Council and other major exporters of nuclear materials had made no secret of their marked preference, including through their nuclear export policies, for Iraq.

Did the Agency have any evidence about Iraq to cause it to have misgivings during the 1980s? The Agency operates effectively while Member States have confidence in the transparency of its operations. Director General Hans Blix is acutely aware of this principle. No Agency concerns were made known and the conclusion must fairly be that it had no such evidence.

Nevertheless, the Agency had difficulty defending itself. It could not deflect criticism by pointing to the former policies of principal suppliers to Iraq, who were also prominent members of the Agency and the Board of Governors, and who were in some measure responsible and had contributed in the 1980s to Iraq's clandestine nuclear development. It had to confine its defence to the limitations of the rules and practices of the safeguards system.

How an international organization with no intelligence gathering capability could have detected clandestine nuclear activity in Iraq when the resources of sophisticated national intelligence agencies had failed to do so was never convincingly explained. The Agency was fully aware of this contradiction but, mindful of its chief clients, was unable to use this argument publicly.

Some criticism of the Agency therefore was protective and a self-serving attempt to divert attention from misjudgements in policies or practice of industrialized suppliers. It became evident later from documents found by the IAEA in Iraqi possession that in the 1980s a number of States with advanced nuclear fuel cycles had permitted the export to Iraq of relevant materials and technology. Some had a dual use capability, i.e. were capable of being used either for legitimate industrial purposes or, in Iraq's case, a clandestine nuclear weapons programme. Some export policies seemed to have been administered carelessly with no particular concern about the intended end use of the materials or equipment. Whilst it is not suggested that these policies were deliberately aimed to assist Iraq to develop its nuclear capability, they appear to have been the by-products of policies, indifferent and damaging, which focused on the short term commercial advantages rather than the long term strategic implications.

The Agency's verification system was clearly porous. More rigorous control over export policies was a matter for governments, but the strengthening of the safeguards system was the concern of the Agency. The Director General and the Board of Governors responded vigorously. The criticisms and re-examination of policies had revealed that the limits of the safeguards system were not generally well understood and that changes and reforms were urgently needed, in both national and international policies, to restore confidence in the Agency and in an effective international safeguards system.

The Board, between 1991 and 1993, after more than thirty years of operating effectively in decent obscurity, temporarily found itself the object of international public and media attention. It responded to this pressure by adopting additional measures to strengthen the safeguards system which later proved to be essential political and technical underpinnings when the DPRK issue came up. Dr. Blix proposed that the Board of Governors strengthen the safeguards system by reaffirming the Agency's right of access to additional information and unrestricted access, through a special inspection, to any relevant location (i.e. to any site of possible safeguards concern). He emphasized that in any such eventuality the strong support of the international community, both in the Board of Governors and in the Security Council, would be essential.

The first proposal had two aspects. The Agency's own information base was strengthened by asking Member States to volunteer to provide it with additional reporting on exports and imports of nuclear material and, also, on specified equipment and certain non-nuclear materials used in nuclear plants and earlier advice on the design information of nuclear facilities. This was not contentious, although some substantial exporters were concerned about the administrative burden of additional reporting. Secondly, as the Agency does not have an independent intelligence capability and, apart from information gained by the application of safeguards, relies largely on public sources and what Member States might provide, it therefore proposed to use information provided by national sources. This caused misgivings in some government and academic circles as it was feared that the Agency's independence might be prejudiced and that it might become too dependent on Washington. The Board nevertheless endorsed this proposal, but declined to provide funds for additional staff for intelligence collection and assessment. (This contention was again raised during the DPRK consideration when the Agency drew on intelligence material of US origin. But the very irritation that the Agency's actions caused at times in some obsessional, recondite circles in Washington suggested a reasonably successful effort to remain independent.) The Board reaffirmed

the right of the Agency to call for a special inspection as set down in the safeguards agreements. This provision had never been used in relation to an undeclared nuclear facility and the Director General thought it prudent to remind Member States of this power and to secure endorsement of its continuing validity. This proved percipient because it was used in the DPRK case.

Should the safeguards system find a State in non-compliance with its safeguards obligations, the Agency's governing charter — the Statute — provides for recourse to the Security Council. The energy and application of the Security Council over Iraq heartened and impressed supporters of collective security and emphasized to Agency managers that possible recourse to the Council might be particularly relevant in any future crisis. The Director General was therefore anxious to secure the Board's understanding and support for this principle.

After the Gulf War, supplying countries also reviewed their export policies. Germany, Belgium and Switzerland, for instance, all of whom have significant nuclear industries, had refused until 1990 to insist that the importing State should accept comprehensive safeguards on its nuclear activities as a condition of supply of nuclear materials or equipment. In retrospect, such conditions could have been very relevant to the end use of exports to Iraq capable of nuclear application.

A Nuclear Suppliers' Group, a group of industrialized exporters of nuclear material and equipment, had existed since 1978 to try to co-ordinate national policies on the export of nuclear technology and material. Its consultations had lapsed in the 1980s', but in the wake of the Iraqi disclosures the Group was revived and participants agreed to new and tighter guidelines designed to ensure that nuclear exports (including dual use items) would be used solely for peaceful purposes and that there should be no nuclear exports to non-weapon States that did not have comprehensive IAEA safeguards. In essence, post-Gulf War suppliers agreed at the time to put security concerns ahead of commercial considerations.

These decisions, the Board of Governors' energetic responses and the Agency's successful investigations in Iraq and responsible analysis and reporting helped to restore the Agency's reputation, made it more alert and assertive in its approach to verification and more confident that it could rely on the positive support of the Board of Governors and the wider international community should there be another challenge. This came quickly.

Sensitized by the failures in detection and inconsistencies and weaknesses in national nuclear export policies, the international community took

up non-proliferation as the issue of the moment. Major changes were at hand. South Africa announced that it had produced six nuclear weapons which it dismantled before it acceded to the NPT in 1991, and placed all its facilities and equipment under full scope safeguards. France and China, both nuclear weapon States, accepted the international obligations of non-proliferation and became NPT parties in 1992. Argentina and Brazil, both of which had sizeable nuclear establishments but were not parties to the NPT, set up a bilateral safeguards authority and, together with the latter, negotiated an agreement with the IAEA which brought all nuclear material in the two countries under Agency safeguards. All the States of the former USSR other than Russia declared their intention to become or remain non-nuclear-weapon States. More States joined the Nuclear Suppliers' Group. Membership of the NPT became almost universal. Preparations began for the 1995 NPT Review and Extension Conference which would have to decide the crucial issue of the future of the international non-proliferation regime, the overarching legal structure for safeguards.

THE DPRK CASE

The circumstances of the dispute with the DPRK differed markedly from that with Iraq but the safeguards issue was essentially the same — the unqualified necessity for a full disclosure of the nuclear inventory to ensure that the international community would be confident that the State was engaged solely in peaceful activity. Iraq had been defeated in war, economic sanctions had been imposed, and the IAEA and the UN Special Commission on Iraq had wide powers of search and enquiry under successive Security Council resolutions. From time to time IAEA inspectors had reported to the Security Council that Iraq was seriously obstructing the search for and destruction of its nuclear potential and the Council had adopted resolutions to exert pressure on Iraq to comply.

The DPRK's safeguards agreement with the Agency was concluded about five years after the required date, which in itself caused disquiet and suspicion about the country's nuclear intentions. No accurate information about the extent of the DPRK's nuclear programme was available and reports persisted that the DPRK had begun amassing plutonium for a nuclear weapons capability. These reports were particularly unsettling on the Korean peninsula, in North East Asia and to other countries in the Asia-Pacific region. The DPRK therefore came under increasing pressure to observe its safeguards agreement in every respect.

Since the end of the three-year war between North and South Korea in the early 1950s, in which China participated on the North Korean side, and the USA, Australia, the United Kingdom and a number of other countries fought to assist South Korea, the DPRK has remained almost hermetically sealed against external influences. It has a struggling economy, low living standards, few friends — among them China and Russia — and a reputation for bizarre international behaviour. Large armed forces maintained a hostile posture towards the Republic of Korea (ROK, South Korea) and the US forces, with a nuclear weapons capability, stationed there. In enviable contrast, the ROK is an ‘economic tiger’, one of Asia’s modern economic miracles with spectacular economic achievements and wide diplomatic and political acceptance including by China and Russia.

Early in the 1990s, the DPRK seemed to have decided to come out of its shell. It joined the United Nations in September 1991 and at the end of that year signed a joint declaration with the ROK on the denuclearization of the Korean peninsula. The conclusion of a safeguards agreement with the IAEA followed quickly. Was this a genuine desire for reconciliation with the South; was the North struggling to come to terms with its self-imposed isolation and insecurity exacerbated by the South’s flourishing economy and international prestige; was it an attempt to buy time to proceed with weapons development? — speculation was prolific.

The DPRK provided the Agency in May 1992 with an initial report of its nuclear materials and design information about its nuclear facilities, and the Agency made six inspections up to January 1993 to verify its accuracy. It found inconsistencies in the accounting of the amount of plutonium declared by the DPRK, raising questions whether more plutonium had been produced than had been disclosed. Estimates of the amount of plutonium unaccounted for varied between a few grams and as much as 20 or 40 kg. (The IAEA defines the amount needed to make a nuclear weapon as about 8 kg.)

The Agency’s request for additional information and the right to inspect two nuclear waste sites to obtain accurate and complete information was refused principally on the grounds that the Agency’s accounting of the amount of plutonium was wrong, that it would involve access to military sites of no nuclear significance and that in requesting access the Agency had made use of information from a third party — the USA.

The DPRK’s challenge was met. At stake was the maintenance of international confidence in the safeguards regime and the Agency’s reputation after great efforts had been made to repair the failures over Iraq. The NPT

Review and Extension Conference was approaching and it was no time to appear weak before a challenge.

The Agency proved to have an unexpected talent for prudent and patient diplomacy. It had to persuade the DPRK to stay within the rules and fulfil its legal obligations but not in such a manner that might precipitate the DPRK to abrogate its responsibilities. It also had to balance the sentiment in some Member States that the DPRK, a small Asian State, was being unduly pressured by the West through the Agency, with the attitude from others that resolving the question about plutonium was an urgent issue adversely affecting the security of the ROK and Japan and should be pursued expeditiously. Sensitive management and judgement were demanded and provided — a skilful juggling performance. The Agency therefore moved firmly but cautiously, and strictly within the strengthened rules, to maintain contact and dialogue and gradually to try to verify the complete nuclear inventory.

The DPRK was also a skilful diplomatic player and, as later events proved, got results by a blend of threats and inducements. In March 1993, it announced intention to withdraw from the NPT, which would have terminated its safeguards agreement three months later, and relieved it of most of its legal obligations to the Agency, was well timed.

The issue of safeguards verification was not, however, the DPRK's main concern. What it wanted, and later achieved, was the withdrawal of US nuclear weapons from the ROK, suspension of an annual US military exercise with the ROK and direct bilateral talks with the USA. It was quite open about its basic purposes: "...we joined the NPT for the purpose of getting the US nuclear weapons withdrawn from South Korea, removing the US nuclear threat to us and denuclearizing the Korean peninsula..."³

Parallel with the Agency's efforts, a small advocacy group of Board Members, initially Australia, Canada, Japan and the USA, soon joined by the ROK, met periodically in 1992–1993 to review the position, make representations to the Director General, exert pressure on the DPRK at Board meetings and stimulate thinking of Board Members on the issue by lobbying in Vienna and home capitals. As the issue became more urgent in early 1993 the group met frequently, sometimes daily.

³ IAEA document GOV/INF/673.

At first the group found it hard to get the support or even the attention of some Board Members. Some developing countries felt that the preoccupation with safeguards reflected an obsession with one issue which deflected interest and support from other Agency activities, primarily technical assistance, and distorted the Secretariat's functions and energies. The problems in the Korean peninsula were perceived to be so complex that continuing patient diplomacy was preferable to a preoccupied insistence on the application of the principles of safeguards. Among the developing countries, Egypt was particularly sympathetic and knowledgeable about the importance of effective safeguards.

Some industrialized countries also seemed slow to grasp the strategic implications of potentially unaccounted stocks of plutonium in an isolated authoritarian State with a sizeable nuclear industry located in a sensitive and tense geographical and political situation. It became evident from the Agency's inspections up to January 1993 that the DPRK was deliberately obstructing the investigations, going beyond reasonable differences in interpretation over legal and technical issues. The DPRK seemed to have something to hide.

Support in the Board for the Agency's efforts began to grow from the advocacy group's diplomatic pressure in Vienna and home capitals, from the demonstrated patience and professional persistence of the Director General and his colleagues, and from the accumulating evidence of DPRK obstruction of Agency inspections. The advocacy group was expanded: some European Union countries, notably France, joined. With the zeal of the recent convert, France was rigorous in its advocacy of the virtues of the principles of safeguards. The group prepared a draft resolution in early 1993 which would put the weight of governments behind the Agency's actions. The task then was to secure the co-sponsorship of as many members of the Board as possible.

When the matter came before the Board in February 1993, the Director General sought the Board's backing to request the DPRK to agree to inspection of the two disputed sites. With no conclusive results from the previous six inspections, the Agency and the sponsors of the draft resolution wished to increase the pressure to secure compliance. Not to do so would have left the Agency looking weak and raised renewed doubts about the safeguards regime. The draft resolution endorsing this approach was introduced by Australia on behalf of 22 members of the 35 member Board and approved without a vote. A key to its successful passage was the tacit support of China. It certainly had no wish to see the DPRK become a nuclear weapons power and it had many

reasons to encourage détente on the Korean peninsula. Though it did not believe that the DPRK should be backed into a corner, it was persuaded, through multiple lobbying in Beijing and Vienna, that this resolution was a reasonable expression of Board concern. What tipped the scales decisively in the Board and secured the very strong vote for the Director General's proposal was the display of a sequence of satellite photographs showing changes, intended to conceal its existence, in the external appearance of a suspected nuclear site in the DPRK — one which the Agency had persistently sought to visit. This was a unique experience, the first time the Board had made use of such intelligence material. It was consistent with the Director General's mandate, post-Iraq, to have access to and make use of additional information.

It was a watershed for the Board and the Agency too in other ways. The Board, which on this occasion met in closed session, rarely decided its business by resolutions and votes. It disdained this practice as unnecessary and undesirable in a technical agency where business was best concluded by consensus after a chairman's summary. This procedure had worked well in the club-like atmosphere which had evolved over thirty years. The Board included members of very long standing with professional memories, experience and a strong sense of decorum and appropriate professional behaviour. There was trepidation and anxiety, but in the end the Board acted decisively.

Once the Board had taken this decision, others followed more easily. In mid-March 1993 the Director General reported that the Agency had been unable to carry out the required inspections and on 1 April the Board concluded that the DPRK was in a state of non-compliance with its obligations and referred the issue to the Security Council. This judgement, in a resolution again introduced by Australia on behalf of more than twenty sponsors and adopted easily, was, on this occasion, opposed by China as exerting too much pressure on the DPRK.

At this point the Agency relinquished primary carriage of the issue to the Security Council or, in reality, to the permanent members of the Council, some of whom had barely disguised their impatience to remove it from the hands of the 'technical' agency. In the Security Council these five States have the power of veto and much greater control whereas in the Agency they were equal members in a body of 35 Board members accustomed to consensus and measured speed where their status related to the quality of their representation and policy contribution.

The Director General had recognized the realities of power and began to consult the permanent members of the Council independently of his consultations with other groups in the weeks before the matter went to New York.

The Security Council proved no better placed than the Agency to secure compliance. China, a permanent member of the Council with the power of veto, was reluctant to take precipitate action against the DPRK and was not prepared to contemplate the imposition of economic sanctions. Argentina and Brazil, then members of the Council and both non-NPT parties, had doctrinal difficulties about Council action pursuant to the NPT. There was loose rhetoric, not taken seriously, about possible military action in the event of persistent non-compliance.

The DPRK's intention to withdraw from the NPT would have taken effect in mid-June 1993. This proved to be the catalyst. The USA, faced with a choice between coercion and negotiation, began bilateral talks with the DPRK — an objective the DPRK had persistently sought and which, with long gaps between meetings, lasted until October 1994.

The Agency had an ambivalent role during these negotiations. It had no desire to complicate them by imprudent or untoward actions but it continued to try to complete its verification task, fearing that the nuclear material could deteriorate to the point where an accurate determination of the suspected existence of plutonium could be impractical.

After the Board suspended all technical assistance to the DPRK, the DPRK tightened the screws by announcing in June 1994 its decision to withdraw from the Agency. Inspections were suspended but resumed shortly before an agreement between the DPRK and the USA, the "Agreed Framework", was signed in October 1994. This agreement provided for the exchange of the DPRK's graphite moderated reactors and facilities with light water reactors, which would be 'proliferation resistant', i.e. in normal operation producing plutonium unsuitable for use in nuclear weapons. A further provision postponed by up to five years the IAEA's inspection of the two sites in dispute, leaving the issue of unaccounted plutonium unresolved in the meantime.

The security threat in the Korean peninsula has been reduced and the DPRK has made critical security concessions in accepting in due course a "freeze" of its nuclear programme (monitored by the IAEA) and the destruction of its suspected nuclear weapons capacity. From a safeguards perspective the agreement is flawed but when measured against the alternatives of stalemate or coercion it may have been about the best outcome possible.

Neither the Agency nor the Board of Governors were parties to the negotiations between the USA and the DPRK, which had proceeded without any mandate from the Board.

The Agency has had to accept that its right to inspect the disputed sites has been postponed and that the DPRK can continue to be in a state of non-compliance with its safeguards agreement. Director General Blix is a realist and in accepting the Agency's subordination put the best face on it.

Potential proliferators might, however, reasonably conclude from this case study that intransigence can certainly have financial and strategic rewards. The Agency nevertheless came out of the matter well. It had a difficult, awkward, balancing role; negotiating with an obstructive client and being pressed frequently from all sides, including or especially by its strongest supporters, about the pace and direction of its actions. It came under much press and other public criticism and scrutiny. However, it managed to steer a reasonably independent course. For its part the DPRK underestimated the Agency's intrusive accuracy and technological sophistication, perhaps assuming that an international organization might have faltered over the long haul. However, it did not and the experience and lessons of Iraq were rewarded.

A C K N O W L E D G E M E N T S

The IAEA and the Australian Department of Foreign Affairs and Trade were particularly helpful with the provision of documents, other information and advice.