

# LOUD TALK ABOUT A QUIET ISSUE: THE INTERNATIONAL ATOMIC ENERGY AGENCY'S STRUGGLE TO MAINTAIN THE CONFIDENTIALITY OF INFORMATION GAINED IN NUCLEAR FACILITY INSPECTIONS

*Alison Van Lear\**

How concerned today are average citizens about nuclear destruction? Many would say that with the end of the Cold War and the breakup of the Soviet Union, nuclear war is no longer a paramount concern. However, with these world changes also comes instability. Many smaller and newly independent nations find themselves jostling for a piece of the power abandoned by the former Soviet Union, and the key to obtaining this power is the acquisition of nuclear weapons. “[F]ears about the spread of weapons of mass destruction—nuclear, chemical and biological weapons and the missiles to deliver them—have, if anything, intensified.”<sup>1</sup> Some small nations, such as Iraq, are even dangerously close to actually becoming nuclear powers.

In this world, the roles of international organizations such as the International Atomic Energy Agency (IAEA or “the Agency”) and the United Nations Special Commission (UNSCOM) have become critical in balancing power struggles and ensuring that newly independent countries do not develop nuclear weapon-making capacities. Unfortunately, these international organizations are themselves facing serious internal crises. Allegations of espionage that threaten to undermine their ability to maintain confidentiality of information have been leveled. The ability of these agencies to ensure full support and compliance with their policies depends upon countries’ confidence in their major tool, nuclear facility inspection capabilities. The IAEA and UNSCOM must be able to assure others that information gained in nuclear facility inspections will remain confidential. Unfortunately, the espionage claims show that “confidentiality” has become a major problem.

This Note will focus on the problems faced by the International Atomic Energy Agency, both historically and currently. It will address political and judicial measures available to the Agency to deter unauthorized disclosures of confidential materials gained in nuclear facility inspections.

---

\* J.D. 2000, University of Georgia. Author was an intern with the Legal Division of the International Atomic Energy Agency during the Summer of 1999.

<sup>1</sup> *Bombs, Gas and Microbes*, *ECONOMIST*, June 6, 1998, at 23.

## I. HISTORY SETS THE STAGE FOR CURRENT CONFIDENTIALITY ISSUES

### A. *The Birth of Atomic Energy Regulation*

Throughout the development of an international nuclear non-proliferation framework, confidentiality and secrecy have remained at the political forefront. This is largely due to the dual nature of nuclear materials: dissemination of information regarding nuclear materials as a source of energy has been tempered by the reality that "peaceful nuclear programs can provide a means of acquiring the necessary fissile material for nuclear explosives."<sup>2</sup>

The development of a non-proliferation regime can be divided into three stages. The first stage was initiated after the end of World War II and was described as a period of "secrecy."<sup>3</sup> The second stage commenced when the Soviet Union began testing and exploding nuclear devices in the early 1950s.<sup>4</sup> This stage was characterized by international cooperation and dissemination of information on the peaceful use of nuclear materials.<sup>5</sup> The final stage began in the mid 1970s and is marked by an effort to restore confidence in a controlled nuclear regime.<sup>6</sup> Stages one and two were essential to the creation of the International Atomic Energy Agency and its current safeguards program.

During the initial "period of secrecy" in the aftermath of the Second World War, the three nations which had cooperated to discover atomic energy promulgated efforts to control the dissemination of information on the subject.<sup>7</sup> The Trilateral Agreed Declaration was signed on November 14, 1945, by the United States, Great Britain, and Canada.<sup>8</sup> This agreement expressed the countries' willingness to make available to the international community the scientific information necessary for the production of atomic energy.<sup>9</sup> However, the agreement qualified this willingness in the following declaration:

---

<sup>2</sup> LAWRENCE SCHEINMAN, *INTERNATIONAL ATOMIC ENERGY AGENCY AND WORLD NUCLEAR ORDER* 13 (1987).

<sup>3</sup> *Id.* at 15. Scheinman argues that the period lasted from 1946 through 1953. *Id.*

<sup>4</sup> *See id.* at 17.

<sup>5</sup> *See id.* at 17-18.

<sup>6</sup> *See id.* at 19.

<sup>7</sup> *See* PAUL C. SZASZ, *THE LAW AND PRACTICES OF THE INTERNATIONAL ATOMIC ENERGY AGENCY* 11-12 (International Atomic Energy Agency Legal Series No. 7, 1970).

<sup>8</sup> *See id.* at 11.

<sup>9</sup> *See id.* at 11-12.

6 . . . We [the signatories of the trilateral agreement] are not convinced that the spreading of the specialized information regarding the practical application of atomic energy, before it is possible to devise effective, reciprocal, and enforceable safeguards acceptable to all nations, would contribute to a constructive solution of the problem of the atomic bomb. On the contrary we think it might have the opposite effect. We are, however, prepared to share, on a reciprocal basis with others of the United Nations, detailed information concerning the practical industrial application of atomic energy *just as soon as effective enforceable safeguards against its use for destructive purposes can be devised*.<sup>10</sup>

This had the practical effect of withholding atomic energy information until an effective security system could be established.<sup>11</sup> The signatories felt that such a security system was necessary to guarantee that this information would not be used for destructive purposes.<sup>12</sup> The United States affirmed this policy of secrecy in 1946 by enacting the Atomic Energy Act.<sup>13</sup> The act, like the trilateral declaration, prohibited nuclear cooperation until effective international safeguards were in place.<sup>14</sup> Thus, the original three took steps to ensure that information about atomic energy would remain confidential and controlled to prevent its misuse.

In the second stage, many countries had already “begun an inexorable march toward an independent nuclear capability.”<sup>15</sup> This prompted the United States to propose a new policy to meet these political realities, a policy now based on the controlled dissemination of information.<sup>16</sup> President Eisenhower proposed the Atoms for Peace program to the United Nations in December

---

<sup>10</sup> *Id.* at 12 (quoting Joint Declaration by the Heads of Government of the United States, the United Kingdom and Canada, Nov. 15, 1945, *reprinted in* 2 DOCUMENTS ON DISARMAMENT, 1945-1959 1, 2 (U.S. Dep’t of State Pub. No. 7008, 1960) (emphasis added).

<sup>11</sup> *See* SCHEINMAN, *supra* note 2, at 16. The declaration maintained that the “safeguards” system it envisioned was the collective responsibility of the international community. *Id.* It called on the United Nations to create a commission to deal with the nuclear challenge. *Id.*

<sup>12</sup> *See id.*

<sup>13</sup> *See id.* at 17.

<sup>14</sup> *See id.*

<sup>15</sup> *Id.*

<sup>16</sup> *See id.* at 18.

1953. His plan was to promote international cooperation on the peaceful use of the atom.<sup>17</sup>

### *B. The Safeguards System*

The key concept underlying Eisenhower's Atoms for Peace program was the creation of a safeguards system requiring states to submit to inspections to ensure that nuclear matter was used only for peaceful purposes and was fully accounted for.<sup>18</sup> Under Atoms for Peace, the safeguards system was implemented through bilateral treaties.<sup>19</sup> A supplying country could require the receiving state to allow it to conduct such inspections.<sup>20</sup>

After the creation of the International Atomic Energy Agency, the United States transferred inspection responsibility formerly held under treaties to the Agency.<sup>21</sup> In doing so, the United States faced great resistance from many of the parties to the bilateral agreements.<sup>22</sup> Many countries felt that the creation of a central inspection system headed by the IAEA would allow nations with inspectors on the IAEA staff to gain technological advantages through espionage activities.<sup>23</sup> Since its inception, the IAEA safeguard system has been plagued by concerns about confidentiality within the Agency.

### *C. Statute of the International Atomic Energy Agency*

Attempts to quell states' concerns about the vulnerability of confidential information within the Agency were undertaken in the drafting of the statute and staff regulations of the IAEA. For example, the statute attempted to make clear that only those with the "highest standards of . . . integrity" would be

---

<sup>17</sup> *See id.* Atoms for Peace was essential to negotiations for the development of the International Atomic Energy Agency that was designed to maintain a "safeguards" system to prevent the diversion of information for destructive purposes. *Id.* at 63-64.

<sup>18</sup> *See id.* at 30-31.

<sup>19</sup> *See id.* at 36.

<sup>20</sup> *See id.* at 31. However, many of the United States bilateral treaties contained a proviso that if an international agency were established, the responsibility for safeguards inspections would be transferred to that agency. *See id.* at 36. By 1957, the year that the International Atomic Energy Agency was established, the United States had bilateral agreements with over twenty-four nations. *See id.*

<sup>21</sup> *See id.* at 36.

<sup>22</sup> *See id.* The transfer of all bilateral treaties was completed in the 1960s. *See id.* at 37.

<sup>23</sup> *See id.* at 36-37.

employed by the IAEA.<sup>24</sup> Further, to reduce any conflicts of interest, the "General Principles to be Observed in the Provisional Staff Regulations of the Agency" emphasized that employees of the IAEA must be international civil servants with no national responsibilities who would be loyal only to the United Nations and to the Agency.<sup>25</sup> The statute further provided that staff members "shall refrain from any action which might reflect on their position as officials of the Agency; . . . [and] *they shall not disclose any industrial secret or other confidential information coming to their knowledge by reason of their official duties for the Agency.*"<sup>26</sup> Finally, Staff Regulation 1.11 required all members of the IAEA staff to take the following oath:

I solemnly swear (undertake, affirm, promise) to exercise in all loyalty, discretion and conscience the functions entrusted to me as an international civil servant of the International Atomic Energy Agency, to discharge these functions and regulate my conduct with the interests of the Agency only in view, and not to seek or accept instructions in regard to the performance of my duties from any government or other authority external to the Agency.<sup>27</sup>

Each of these provisions embodied an effort by the IAEA to earn the confidence of member states in its ability to safeguard sensitive materials. Throughout the evolution of the nuclear non-proliferation regime, there has been a common concern with confidentiality issues.<sup>28</sup>

---

<sup>24</sup> Statute of the International Atomic Energy Agency, art. VII, para. D, *reprinted in* JOINT COMMITTEE ON ATOMIC ENERGY, 85TH CONG., REPORT ON THE CONFERENCE OF THE STATUTE OF THE INTERNATIONAL ATOMIC ENERGY AGENCY 17 (Comm. Print 1957).

<sup>25</sup> See SZASZ, *supra* note 7, at 735 (quoting *General Principles to be Observed in the Provisional Staff Regulations of the Agency*, IAEA Doc. GC.1(S)/23; GC.1(S)/RES/13).

<sup>26</sup> Statute of the International Atomic Energy Agency, *supra* note 24, art. VII, para. F (emphasis added).

<sup>27</sup> SZASZ, *supra* note 7, at 781.

<sup>28</sup> The concern for confidentiality is especially pressing now. The Non-Proliferation Treaty regime "at one point nearly collapsed under the burden of its own complacency." *Bombs, Gas and Microbes*, *supra* note 1, at 23. After the end of the Gulf War in 1991, despite regular and systematic IAEA inspections, reports indicated that Iraq was within a year or two of completing a bomb and that North Korea had lied about how much plutonium it had produced. *See id.* After these incidents surfaced, the IAEA was asked to devise a "far more intrusive inspection system that would do more to deter cheats." *Id.* at 24. For this "intrusive" system to be workable, the IAEA must have the cooperation of member states. This cooperation can only be achieved if member states have confidence that the information gained in the inspections will not be leaked to the public or sold to the highest bidder.

## II. CURRENT EVENTS HIGHLIGHT THE PROBLEM OF MAINTAINING CONFIDENTIALITY IN WEAPONS INSPECTIONS

While this Note will focus on the entreaties for change within the International Atomic Energy Agency, it is the recent incidents concerning UNSCOM inspectors and employees in Iraq that have sparked many of the Agency's concerns. In 1990, the United Nations first imposed economic sanctions against Iraq in response to the Iraqi invasion of Kuwait.<sup>29</sup> It was resolved that these sanctions would not be lifted until Iraq eliminated all of its weapons of mass destruction.<sup>30</sup> Based on the terms of Security Council Resolution 687, Iraq was supposed to "provide inventories of all material that could be used for nuclear, chemical, biological weapons and ballistic missiles."<sup>31</sup> To ensure compliance with this UN directorate, UNSCOM was

<sup>29</sup> See *Saddam's Sons Leave Aziz in the Dark on Banned Weapons*, AGENCE FRANCE-PRESSE, Oct. 22, 1998, available in 1998 WL 16623688.

<sup>30</sup> See *id.*

<sup>31</sup> John J. Goldman & Norman Kempster, *Nuclear Deception by Iraq Charged*, L.A. TIMES, June 27, 1991, at A1. Resolution 687 provides in relevant part:

The Security Council, . . .

8. Decides that Iraq shall unconditionally accept the destruction, removal, or rendering harmless, under international supervision, of:

(a) All chemical and biological weapons and all stocks of agents and all related subsystems and components and all research, development, support and manufacturing facilities;

(b) All ballistic missiles with a range greater than 150 kilometers and related major parts, and repair and production facilities; . . .

12. Decides that Iraq shall unconditionally agree not to acquire or develop nuclear weapons or nuclear-weapons-usable material or any subsystems or components or any research, development, support or manufacturing facilities related to the above; to submit to the Secretary-General and the Director-General of the International Atomic Energy Agency within fifteen days of the adoption of the present resolution a declaration of the locations, amounts, and types of all items specified above; to place all of its nuclear-weapons-usable materials under the exclusive control, for custody and removal, of the International Atomic Energy Agency, with the assistance and cooperation of the Special Commission as provided for in the plan of the Secretary-General discussed in paragraph 9 (b) above; to accept, in accordance with the arrangements provided for in paragraph 13 below, *urgent on-site inspection and the destruction, removal or rendering harmless as appropriate of all items specified above*; and to accept the plan discussed in paragraph 13 below for the *future ongoing monitoring and verification of its compliance with these undertakings*; . . .

[The Security Council] [t]akes note that the actions to be taken by Iraq . . . [pursuant to the] present resolution represent steps towards the goal of establishing in the Middle East a zone free

created.<sup>32</sup> One of the most effective tools that UNSCOM employs to fulfill its duties is the routine inspection of Iraqi plants and facilities.<sup>33</sup> Such inspections allow the United Nations to inventory the weapons that Iraq possesses, to remove or destroy weapons, and to ensure that new biological and chemical weapons are not being created.<sup>34</sup> By nature, these subjects are highly sensitive. Iraq is forced to display its most confidential information to an international organization employing 120 people of twenty-five different nationalities.<sup>35</sup> The problem is exacerbated when the international organization appears to be unable to guarantee that information compiled by these inspectors will not be leaked to other countries.

Iraq has latched on to the "confidentiality movement" in order to fight inspection attempts by both UNSCOM and the IAEA. On October 29, 1997,

from weapons of mass destruction and all missiles for their delivery and the objective of a global ban on chemical weapons. . . . S.C. Res. 687, U.N. SCOR, 2981st mtg., U.N. Doc. S/RES/687 (1991) (emphasis added).

<sup>32</sup> See S.C. Res. 687, *supra* note 31. Resolution 687 states that:

9. (b) The Secretary-General, in consultation with the appropriate Governments[,] . . . shall develop, and submit to the Council for approval, a plan calling for . . .

(i) The forming of a Special Commission, which shall carry out immediate on-site inspection of Iraq's biological, chemical and missile capabilities, based on Iraq's declarations and the designation of any additional locations by the Special Commission itself . . .

(ii) The yielding by Iraq of possession to the Special Commission for destruction, removal or rendering harmless, taking into account the requirements of public safety, of all items specified under paragraph 8 (a) above, including items at the additional locations designated by the Special Commission under paragraph 9 (b) (i) above and the destruction by Iraq, under the supervision of the Special Commission, of all its missile capabilities, including launchers, as specified under paragraph 8 (b) above. . . .

*Id.*

<sup>33</sup> See *id.* The Resolution provides for inspections as follows:

9. (a) Iraq shall submit to the Secretary-General, . . . a declaration of the locations, amounts and types of all items specified in paragraph 8 and agree to urgent, on-site inspection as specified below; . . .

10. [The Security Council] requests the Secretary-General, in consultation with the Special Commission, to develop a plan for the future ongoing monitoring and verification of Iraq's compliance with this paragraph. . . .

*Id.*

<sup>34</sup> See *id.*; see also Goldman & Kempster, *supra* note 31.

<sup>35</sup> *UNSCOM Throws Out US Arms Inspector for Illegal Use of Camera*, AGENCE FRANCE-PRESSE, Oct. 22, 1998, available in 1998 WL 16623686.

Iraq accused Americans on UNSCOM inspection teams of being spies and banned them from conducting inspections in Iraq.<sup>36</sup> This stand-off culminated on August 5, 1998, when Iraq suspended arms inspections. It did, however, allow UNSCOM to continue routine monitoring.<sup>37</sup> On October 31, 1998, Iraq took the final step and severed all dealings with United Nations inspectors.<sup>38</sup> Before this breakdown in Iraqi-UN relations occurred, however, several incidents strengthened Iraq's claims that UNSCOM was merely an intelligence mission for United Nations member states. These incidents prompted the current debate within the IAEA about how to guarantee that confidential material gained in nuclear facility inspections will remain secret.

The first incident involved the resignation of UNSCOM inspector Scott Ritter on August 26, 1998.<sup>39</sup> Ritter's resignation was tendered in the midst of Iraq's continued refusal to cooperate with inspection programs.<sup>40</sup> Controversy arose concerning information Ritter conveyed in interviews after his resignation from the international organization. In one interview with a Tel Aviv newspaper, Ritter revealed that the Special Commission had relied on Israeli intelligence to aid in "unmasking Iraq's concealment of its chemical, biological and nuclear weapons programmes."<sup>41</sup> The former inspector maintains that "if it weren't for Israel, the Special Commission would not have

---

<sup>36</sup> *Chronology of the Iran [sic]-UN Standoff*, ASSOCIATED PRESS, Oct. 31, 1998, available in 1998 WL 21781851.

<sup>37</sup> *Iraq Accuses Chilean UNSCOM Member of Spying*, AGENCE FRANCE-PRESSE, Oct. 21, 1998, available in 1998 WL 16623033. Iraq determined that UNSCOM inspections were conducted for the purpose of spying for the United States. General Hussam Mohammad Amin, the Iraqi liaison to the United Nations Special Commission, charged: "Some inspectors, rather a large number of inspectors, are doing their work not for the objectives of the UN . . . but for their own purposes which are related to intelligence activities." *Id.*

<sup>38</sup> *Chronology of the Iran-UN Standoff*, *supra* note 36.

<sup>39</sup> *Scott Ritter Resigns as UN Weapons Inspector for Iraq*, AGENCE FRANCE-PRESSE, Aug. 27, 1998, available in 1998 WL 16586518. Ritter, a former intelligence officer in the Marine Corps, joined UNSCOM in September 1991. *See id.* Ritter resigned from his post as UN inspector maintaining that both the United States and the UN were too soft on Saddam Hussein's non-compliance with inspection policies. *See id.* In his resignation letter, Ritter stated: "The issue of unrestricted access, is, in my opinion, the cornerstone of any viable inspection regime. . . . Unfortunately others do not share this opinion, including the Security Council and the United States." *Id.* Ritter's resignation has "reignited the debate over U.N. policies in Iraq." *CNN Today: Top U.N. Weapons Inspector Resigns Over U.N. Politics with Iraq* (Cable News Network broadcast, Aug. 27, 1998).

<sup>40</sup> *Chronology of the Iran-UN Standoff*, *supra* note 36.

<sup>41</sup> *Iraq Protests UN Confirmation of Weapons Inspectors' Links with Israel*, AGENCE FRANCE-PRESSE, Oct. 2, 1998, available in 1998 WL 16611085.



been able to carry out the anti-concealment effort."<sup>42</sup> These same allegations also were reported in the Washington Post.<sup>43</sup> The Post carried a more detailed description of the Israeli contribution, including the fact that intelligence was shared with Israel from spy planes that had been loaned by the United States to UNSCOM.<sup>44</sup>

UN Special Commission Chairman Richard Butler was "furious over Mr. Ritter's exposure of a link with Israeli intelligence" and immediately responded to Ritter's allegations.<sup>45</sup> Butler sent Ritter a letter reprimanding him for breaching the UN confidentiality mandate by disclosing information regarding both Israeli cooperation with UNSCOM and Iraq's weapon-making capabilities.<sup>46</sup> The letter stated that Ritter "was in violation of his UN contract in making public confidential information that had come to his knowledge through his job at the UN."<sup>47</sup> Butler also reportedly "warned" Ritter not to divulge any other confidential information acquired in his official duties with the UN.<sup>48</sup> The Secretary-General of the UN, Kofi Annan, approved of this admonition.<sup>49</sup> A spokesperson for the UN summed up the problem that the UN, UNSCOM, and the IAEA face with errant inspectors. When asked whether any punitive action was planned for Ritter, the spokesperson

---

<sup>42</sup> Barton Gellman, *Israel Gave Help to U.N. Team in Iraq*, WASH. POST, Sept. 29, 1998, at A1.

<sup>43</sup> *See id.*

<sup>44</sup> *See id.*

<sup>45</sup> Ian Black, *Weapons Team Fumes at UN Caution on Iraq*, THE GUARDIAN (London), Oct. 29, 1998, Foreign Page.

<sup>46</sup> *Butler Reprimands Former Weapons Inspector for Speaking Out*, AGENCE FRANCE-PRESSE, Oct. 1, 1998, available in 1998 WL 16610780. In his letter, Butler reminded Ritter that "all officials of the UN and UNSCOM sign an undertaking not to reveal matters that should not be revealed publicly, which they've obtained in their official duty." Barbara Crossette, *Chief UN Arms Inspector in Iraq Orders Subordinate to Respect Vows of Silence*, INT'L HERALD TRIB., Oct. 3, 1998, at 4.

<sup>47</sup> *Id.* Butler stated to reporters that "[Ritter] has said some things that I regret . . . in some cases [he has] revealed info he shouldn't have revealed because it was obtained in the course of his official duty," and he is under the obligation not to disclose "proprietary information." Betsy Pisik, *Inspector Dismisses Threat of Iraqi Bomb; Says Baghdad Not Close on the Weapon*, WASH. TIMES, Oct. 2, 1998, at A1. In early October, Ritter allegedly threatened to sue Butler for his comments implying that Ritter had broken the law. *See Arms Inspections in Iraq on Hold, But Words Fly at U.N.*, DALLAS MORNING NEWS, Oct. 12, 1998, at 9A, available in 1998 WL 13109744. Butler apologized for accusing Ritter of breaking the law, stating that Ritter misunderstood him "if he understood that I meant he broke American law. . . . All that I meant was that he violated his commitments to the United Nations." *Id.*

<sup>48</sup> Pisik, *supra* note 47.

<sup>49</sup> *Id.*

responded that "we don't have a prison or court system here" at the UN.<sup>50</sup> The availability of retributive measures, if available at all, is extremely unclear.

Three other incidents have left both the UN and member states wondering if confidential information could be protected under the international system. One involved the confiscation of film and a camera from a Chilean helicopter pilot employed by UNSCOM.<sup>51</sup> Iraq accused the pilot of spying by taking unauthorized photographs of "sensitive equipment" at a test field.<sup>52</sup> The head of UNSCOM consulted with Chilean authorities and determined that the pilot should "be withdrawn from Iraq because of his breach of UNSCOM rules."<sup>53</sup> Iraq again expressed concern that several of the inspectors and employees of UNSCOM were taking advantage of their positions with the international organization to conduct intelligence missions.<sup>54</sup>

A similar incident involved an American weapons inspector, also employed by UNSCOM, who photographed an Iraqi missile site on October 8, 1998.<sup>55</sup> The United States inspector was ordered to leave Iraq and was recalled by the commission to face espionage charges.<sup>56</sup>

The final incident involved allegations made by a senior British arms inspector that Russian members of the Special Commission were leaking UNSCOM information to Iraq.<sup>57</sup> The British inspector claimed that after hearing rumors of Russian confidentiality breaches "at a top planning meeting . . . [,] we planted a false brief which went straight up the line of command back to the Iraqis."<sup>58</sup>

Many continue to question the role of the IAEA in nuclear facility inspections. Recently, NBC broadcast a news story that supported the claim that weapons inspections have been conducted merely to gather national intelligence.<sup>59</sup> The news report alleged that United States intelligence agencies used weapons inspections as a cover to develop the capacity to track Saddam

<sup>50</sup> *Butler Reprimands Former Weapons Inspector for Speaking Out*, *supra* note 46.

<sup>51</sup> *See Iraq Accuses Chilean UNSCOM Member of Spying*, *supra* note 37.

<sup>52</sup> *Id.*

<sup>53</sup> *Chilean UNSCOM Member to [Be] Removed From Iraq for Rules Violation*, AGENCE FRANCE-PRESSE, Oct. 23, 1998, available in 1998 WL 16625003.

<sup>54</sup> *See id.*

<sup>55</sup> *See U.S. Arms Inspector Recalled from Iraq on Espionage*, XINHUA ENGLISH NEWSWIRE, Oct. 22, 1998, available in 1998 WL 19490504.

<sup>56</sup> *See id.*

<sup>57</sup> *See Charmian Evans, Arms Team Forced to Let Saddam Off Hook*, SUNDAY TIMES (London), Oct. 25, 1998, § 1, at 24.

<sup>58</sup> *Id.*

<sup>59</sup> *NBC Nightly News: Spy Story* (NBC television broadcast, Jan. 6, 1999).

Hussein and to eavesdrop on his personal radio telephone network.<sup>60</sup> According to the broadcast, sources reported that in 1996, a United States weapons inspector planted a series of eavesdropping devices at inspection sites in Iraq.<sup>61</sup> Information obtained through these devices was sent to Maryland for decoding and then turned back over to the UN to aid in the inspection of Iraqi weapons.<sup>62</sup> Sources claimed that the United States also used this information to select targets for the December 1998 air strikes on Iraq.<sup>63</sup> While the State Department and President Clinton deny that the United States worked with UNSCOM for the purpose of undermining the Iraqi regime, experts fear that these allegations of espionage might cause the demise of weapons inspections.<sup>64</sup>

These incidents seem to prove that UN member states have a valid reason to be concerned about their national security when arms inspectors are allowed to roam their top-secret nuclear facilities. Furthermore, what would happen if the threat of termination of employment with UNSCOM or the IAEA was not a sufficient deterrent against sharing confidential materials? Unlike the Chilean pilot and the United States inspector who were ordered to leave Iraq and presumably their positions with UNSCOM, Inspector Scott Ritter voluntarily resigned. In the latter scenario, what punitive measures could be designed to prevent ex-inspectors from leaking confidential information gained in their official capacities? The effectiveness of the weapons and nuclear facility inspection regime is critically dependent on the confidence of member states in the UN's ability to keep confidential material undisclosed.

### III. A RESOURCE FOR CHANGE WITHIN THE INTERNATIONAL ATOMIC ENERGY AGENCY

#### *A. The "Advanced" Confidentiality Regime of the Organization for the Prohibition of Chemical Weapons*

One international organization that has anticipated confidentiality issues and has implemented a strictly detailed system to address potential problems is the Organization for the Prohibition on Chemical Weapons (OPCW or the "Organization"). The OPCW has one of the most "advanced" confidentiality

---

<sup>60</sup> *See id.*

<sup>61</sup> *See id.*

<sup>62</sup> *See id.*

<sup>63</sup> *See id.*

<sup>64</sup> *See id.*

undertakings in the field.<sup>65</sup> The policies and goals of the OPCW may possibly serve as a model for change within the IAEA itself.

Effective April 29, 1997, the Chemical Weapons Convention became an international treaty banning the production, use, or storage of chemical weapons and calling for the destruction of existing chemical weapons.<sup>66</sup> The OPCW was established to implement the Chemical Weapons Convention ("the Convention").<sup>67</sup>

From its inception, the OPCW prioritized a policy of strict confidentiality. The OPCW recognized that "[a] policy for confidential information is essential to the work of the organization because of the intrusive [inspection] measures which are aimed at promoting confidence in compliance with the Convention while respecting States Parties' legitimate concerns about the possible disclosure of sensitive information."<sup>68</sup> In accordance with the Annex on the Protection of Confidential Information to the Chemical Weapons Convention, the OPCW Policy on Confidentiality ("the OPCW Policy") was adopted on May 16, 1997.<sup>69</sup>

The fundamental elements of the OPCW Policy outlined the detailed and precise method of balancing the Organization's need for information with the states parties' need for discretion in disclosing information critical to national security. The first step in the method was to set an ideal goal that the

---

<sup>65</sup> Letter from Larry D. Johnson, Legal Advisor and Director of the International Atomic Energy Agency's Legal Division, to the author (Nov. 13, 1998) (on file with *The Georgia Journal of International and Comparative Law*).

<sup>66</sup> Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, *done* Jan. 13, 1993, art. 1, 32 I.L.M. 800 [hereinafter *Chemical Weapons Convention*].

<sup>67</sup> *The Chemical Weapons Convention—A Guided Tour* (visited Jan. 7, 1999) <<http://www.opcw.org/guide.htm>>.

<sup>68</sup> *Guidelines for Procedures on the Release of Classified Information by the OPCW*, OPCW C-I/Dec. 13, pt. 1, para. 2 (May 16, 1997) (visited Feb. 7, 2000) <<http://www.opcw.org/ci/ci-dec13.htm>> [hereinafter *Guidelines*]. The OPCW further recognizes that "the Convention embodies a balance between that disclosure necessary to enhance confidence in compliance with the Convention, and the prevention of disclosure of information not relevant to the Convention, in order to protect national security. . . ." *Id.* pt. I, para. 3. The OPCW policy sets out a method for these competing interests to coexist. *Id.*

<sup>69</sup> *Id.* (adopting the OPCW Policy on Confidentiality that is annexed to decision). The Chemical Weapons Convention's "Confidentiality Annex" also provides general principles for the handling of confidential material, sets out the conduct and employment of personnel handling confidential materials, calls for measures to prevent disclosure of confidential data in the course of on-site inspections, and provides that the Director-General of the Organization shall establish procedures to be followed in case of breaches. See *Chemical Weapons Convention*, *supra* note 66, Annex on the Protection of Confidential Information.

Organization was to achieve through the OPCW Policy.<sup>70</sup> The principle adopted was that “no information obtained by the Organization in connection with the implementation of this Convention shall be published or otherwise released,” except as specifically provided for.<sup>71</sup>

The second element of the OPCW Policy was that the Organization would be committed to obtaining the least information necessary to meet the requirements of the Convention.<sup>72</sup> To accomplish this task, the Organization would need to be very precise in specifying its requirements for information from a state party.<sup>73</sup>

The third fundamental element of the Organization’s Policy on Confidentiality was an elaborate classification system that set out factors and formulas by which confidential information was classified into levels of sensitivity.<sup>74</sup> Classification is a two step process. Once information has been gathered, the Organization and the state party cooperate to determine if the materials contain confidential information.<sup>75</sup> Then, each confidential part “must be given a classification, based on established categories which respond to the level of sensitivity of confidential information.”<sup>76</sup> Once given a classification, unless otherwise indicated by the state party providing the confidential information, the duration of the protection is presumed to be unlimited.<sup>77</sup>

The fourth element of the OPCW Policy was related to the classification system. An aim of the OPCW was to limit access to confidential information to the least number of people possible.<sup>78</sup> The scope of dissemination of

---

<sup>70</sup> See Chemical Weapons Convention, *supra* note 66, Annex on the Protection of Confidential Information, para. A.2(c).

<sup>71</sup> *Id.*; see also *Guidelines*, *supra* note 68, pt. III, para. 9.

<sup>72</sup> See *Guidelines*, *supra* note 68, pt. II, para. 3(a).

<sup>73</sup> See *id.*

<sup>74</sup> See *id.* pt. V.

<sup>75</sup> See *id.* pt. III, paras. 10-12.

<sup>76</sup> *Id.* pt. V, para. 1.1. Part V of the Policy on Confidentiality defines three categories: “OPCW RESTRICTED,” “OPCW PROTECTED,” and “OPCW HIGHLY PROTECTED,” and provides classification criteria for each category. *Id.* pt. V, para. 1.3. For example, an item characterized as “OPCW HIGHLY PROTECTED” is one that would “cause serious damage to the effectiveness or credibility of the Convention, . . . or cause serious damage from the point of view of national security or commercial secrecy to the interests of a State Party. . . .” *Id.* pt. V, para. 1.14. The OPCW Policy provides that during an inspection, an inspection team shall give information viewed the level of protection afforded to “OPCW HIGHLY PROTECTED.” *Id.* pt. V, para. 1.16.

<sup>77</sup> See *id.* pt. V, para. 3.1. However, it is indicated that the state party or the Organization may periodically review designations of confidentiality “with a view to either declassification, reduction of classification, or release.” *Id.* pt. V, para. 3.2.

<sup>78</sup> See *Guidelines*, *supra* note 68, pt. II, para. 3(d).

confidential information may be partially determined by the level of sensitivity the item of information was adjudged to possess.<sup>79</sup> Further, "[t]he dissemination of confidential information . . . shall be strictly on a need-to-know basis."<sup>80</sup>

By using two additional methods, the Organizations makes information harder to access. First, the OPCW Policy directs the Secretariat of the Organization to store confidential information in a way that "precludes direct identification with the facility [to which] it refers. . . ."<sup>81</sup> Second, all confidential information needed during the "actual conduct of an onsite inspection" shall be kept at the inspected facility and will only be available for on-site use.<sup>82</sup> This procedure eliminates the chance that confidential information will be lost, diverted, copied, or stolen while the information is in transport from the facility to the Organization.

A fifth fundamental element of the Policy on Confidentiality was the commitment to the selection and training of staff members to ensure that each staff member of the OPCW meets "the highest standards of efficiency, competence, and integrity."<sup>83</sup> The Secretariat has the responsibility to "maintain a continuing programme of training and awareness for all staff on confidentiality issues. . . ."<sup>84</sup> In conjunction with this responsibility and as an incentive for employees to abide by the Policy on Confidentiality, a staff member's record on handling confidential materials will be an "explicit element of [his] performance evaluation."<sup>85</sup>

The final element provided the "teeth" of the OPCW Policy on Confidentiality. It detailed the procedures to be followed in the event of breaches of confidentiality or violations of confidentiality obligations.<sup>86</sup> Part IX of the OPCW Policy recognized the need for punitive measures to encourage compliance with the policy regulations.<sup>87</sup> Several sanctions are prescribed by

<sup>79</sup> See *id.* pt. V, para. 1.4.

<sup>80</sup> Chemical Weapons Convention, *supra* note 66, Annex on the Protection of Confidential Information, para. A.2(h).

<sup>81</sup> *Guidelines*, *supra* note 68, pt. IV, para. 1.3.2(f).

<sup>82</sup> *Id.* pt. V, paras. 1.15(d), 1.16.

<sup>83</sup> *Id.* pt. II, para. 3(f).

<sup>84</sup> *Id.* pt. IV, para. 1.3.2(d).

<sup>85</sup> *Id.*

<sup>86</sup> See *id.* pt. IX, para. 1.

<sup>87</sup> *Id.* pt. IX. This section sets out the steps to be taken by the Director-General of the OPCW if there is an indication or allegation of a breach of confidentiality. See *id.* The process begins with an investigation. See *id.* pt. IX.1, paras. 3.1-3.9. If a prima facie case of a breach or violation of confidentiality is established, interim action is taken to ensure that the breach will not continue while the investigation process is conducted. See *id.* pt. IX.1, paras. 4.1-4.4. Then,

the policy as punitive measures. One option is to take disciplinary action within the Organization against current staff members.<sup>88</sup> For serious breaches, the Organization may decide to waive the immunity of the offending staff member.<sup>89</sup> Following a waiver of immunity, “legal proceedings [may be] conducted under the national jurisdiction of a State Party. . . .”<sup>90</sup> Disputes implicating states parties as offenders will be sent to a “Confidentiality Commission” convened for that purpose.<sup>91</sup>

Former staff members of the OPCW who are found to have violated the Organization’s confidentiality mandates may face sanctions which could include the loss of pension rights and cancellation of residual financial or related entitlements.<sup>92</sup> The Organization may also waive immunity from prosecution for actions taken during the former staff member’s term of service with the OPCW.<sup>93</sup> This guarantees that legal proceedings may be brought against former as well as current employees of the Organization.

This confidentiality policy of the OPCW is an extremely comprehensive and far-reaching example of one international organization’s efforts to carve out a workable system to prevent confidentiality breaches.

---

a full report of the investigation will be made by the Director-General and action can then be taken in response to this report. *See id.* pt. IX.1, paras. 5.1-5.6.

<sup>88</sup> *Id.* pt. IX.1, para. 6(a).

<sup>89</sup> *See id.* pt. IX.1, para. 9.1.

<sup>90</sup> *Id.* pt. IX.1, para. 6(b).

<sup>91</sup> *See id.* pt. IX.1, para. 11.3. The Confidentiality Annex to the Chemical Weapons Convention required that a “subsidiary organ of the Conference” be set up in case of a breach involving both the OPCW and a State Party. Chemical Weapons Convention, *supra* note 66, Annex on the Protection of Confidential Information, para. D.23. This organ shall be a “Commission for the settlement of disputes related to confidentiality.” *Id.* Pursuant to this mandate, the Policy on Confidentiality sets forth rules governing the “Confidentiality Commission.” *See Guidelines, supra* note 68, pt. IX.2. The Confidentiality Commission “shall act without interference or direction from either the Secretariat or other organs of the [Organization], but must follow any mandate of the Conference.” *Id.* pt. IX.2, para. 3.9. The aim of the Confidentiality Commission is to clarify the issue of the dispute and to resolve the dispute “in a manner that is acceptable to the disputing parties and that is consistent with the rights and obligations of States Parties and the [Organization] under the Convention.” *Id.* pt. IX.2, para. 3.2. The means adopted for resolution would “preferably comprise a mediation process practically geared to reaching an agreed settlement through negotiation.” *Id.*

<sup>92</sup> *See id.* pt. IX.1, para. 8.

<sup>93</sup> *See id.* pt. IX.1, para. 9.1.

*B. Secrets to Success—Strengths of the OPCW Policy on Confidentiality*

Although the Organization's Policy on Confidentiality has been in effect for less than three years, there are several features of the policy that, in theory, make it a good candidate for success. However, the OPCW has run into some practical problems in applying its Policy on Confidentiality. Addressing the strengths and weaknesses of the OPCW Policy may guide the IAEA in making changes to its own confidentiality policy.

There are many features of the OPCW Policy that appear to be strengths. First, both the Confidentiality Annex to the Chemical Weapons Convention and the Policy on Confidentiality are evidence that the Organization has placed a priority on the confidentiality of the information it collects. Second, the Organization itself plays a greater role in the confidentiality regime as the Director-General of the Organization "is specifically tasked with primary responsibility for the protection of confidential information . . . [and] for supervising adherence to the confidentiality regime. . . ." <sup>94</sup> This is in contrast to the IAEA in which staff members shoulder the primary responsibility for maintaining confidential materials. <sup>95</sup>

Instilling this responsibility at the highest level of the OPCW demonstrates a commitment of the entire Organization to a policy of no tolerance for the dissemination of confidential materials. It also provides the leadership necessary to implement this policy.

A third strength of the OPCW Policy is its attempt to limit both the quantity of confidential information it receives and the number of people who have access to this information. <sup>96</sup> This is important because there will be less information to protect as confidential and fewer individuals who can leak the confidential materials.

The Policy on Confidentiality also provides an incentive to staff members to handle confidential materials carefully. <sup>97</sup> The Chemical Weapons Convention requires that when a supervisor evaluates the performances of inspectors and other staff members, "special attention shall be given to the

---

<sup>94</sup> *Id.* pt. IV, paras. 1.2.1-1.2.2.

<sup>95</sup> Statute of the International Atomic Energy Agency, *supra* note 24, art. VII, para. F. The only reference to confidentiality in the statute that created the IAEA is found in the article enumerating the responsibilities of the Agency's staff. *Id.* The statute provides that staff members "shall not disclose any industrial secrets or other confidential information coming to their knowledge by reason of their official duties for the Agency." *Id.*

<sup>96</sup> See *Guidelines*, *supra* note 68, pt. II, paras. 3(a)-3(e).

<sup>97</sup> *Id.* pt. IV, para. 1.3.2(d).



employee's record regarding protection of confidential information."<sup>98</sup> Therefore, an inspector's job security, advancement, and salary are dependent in part on his ability to maintain the confidentiality of the information he handles.

Another strength of the OPCW Policy is the detailed procedure on how breaches and violations of the policy will be handled.<sup>99</sup> This procedure is important for several reasons. First, it warns employees of the consequences that follow breaches of confidentiality regulations.<sup>100</sup> Second, the procedure for handling breaches sets out concrete guidelines to be followed from the Organization's inception. This is important to avoid the piecemeal development of such a policy that may evolve through trial and error responses to actual violations and breaches.

Third, the detailed regulations on security breaches allow states parties to have confidence that the materials they submit in compliance with the Chemical Weapons Convention will remain confidential.<sup>101</sup> An important part of creating this confidence is allowing states to participate in the process of identifying and punishing breaches. States may bring breaches to the attention of the Organization.<sup>102</sup> They will be kept informed during the breach investigation<sup>103</sup> and may have a chance to prosecute the offender in their national courts.<sup>104</sup> Further, a special commission will be created as a venue for the settlement of disputes related to confidentiality.<sup>105</sup>

---

<sup>98</sup> Chemical Weapons Convention, *supra* note 66, Annex on the Protection of Confidential Information, para. B.12.

<sup>99</sup> See *Guidelines*, *supra* note 68, pt. IX (detailing breach procedures).

<sup>100</sup> See Chemical Weapons Convention, *supra* note 66, Annex on the Protection of Confidential Information, paras. B.5-12. Each staff member must sign a "secrecy agreement" with the Technical Secretariat covering a period beginning with his date of hire by the organization and extending five years after his employment is terminated. *Id.* para. B.9. Further, employees are "advised and reminded about security considerations and of the possible penalties that they would incur in the event of improper disclosure." *Id.* para. B.10.

<sup>101</sup> See *Guidelines*, *supra* note 68, pt. I, para. 2 (maintaining that "need for disclosure of appropriate information to demonstrate compliance with the Convention should be matched by credible reassurances for States parties that . . . any confidential material, once disclosed, will be appropriately protected").

<sup>102</sup> See *id.* pt. IX.1, para. 3.1(b).

<sup>103</sup> See *id.* pt. IX.1, para. 5.2.

<sup>104</sup> See *id.* pt. IX.1, paras. 9.3, 10.1.

<sup>105</sup> See *id.* pt. IX.2 (describing the procedures of the Confidentiality Commission). The Operating Procedures of the Confidentiality Commission have recently been adopted and are set forth in OPCW Doc. C-III/Dec.10 Annex (Nov. 27, 1998) <<http://www.opcw.org/ciii/ciiidc10.htm>>.

While the confidentiality regime created by the OPCW is far-reaching and elaborate, it is not a static system. The regulations stress that a continuing goal of the Organization is enhancement and reform of the confidentiality regime itself.<sup>106</sup>

As these features have been put into practice, however, the OPCW has run into some problems. The IAEA should avoid making the same mistakes when it revises its confidentiality policy. For example, because the OPCW Policy is so detailed and comprehensive, the administrative burden of implementing it has been enormous.<sup>107</sup> By design, this enormous burden has fallen on the shoulders of a comparatively small number of overworked staff members.<sup>108</sup> The OPCW also has had difficulty obtaining the cooperation and compliance of states parties to the obligations of the confidentiality policy. As of July 1999, a majority of states parties had not provided information to the OPCW regarding how OPCW confidential information would be handled within the states' jurisdictions.<sup>109</sup> The OPCW also has requested the help of states parties to reduce the burden on the handling of confidential information.<sup>110</sup> OPCW requests that states parties consider re-assessing the original classifications, as appropriate, of all initial declarations to the Organization.<sup>111</sup> OPCW also requests that states submit all correspondence relating to declarations or final inspection reports to the Confidentiality Branch of the Verification Division, by hand delivery if possible.<sup>112</sup> The Organization believes this will not only help to expedite processing but also will provide greater protection to sensitive

---

<sup>106</sup> See generally *Guidelines, supra* note 68, pt. IX, paras. 6(a), 12.1, 12.2 (calling for the reform and enhancement of the confidentiality regime). One such example involves the requirement that every breach investigation report contain "concrete proposals for the reform or enhancement of the protection of confidential information within the Organisation, both specifically to prevent the recurrence of any breach or violation established by the investigation, and on the basis of other observations about the general protection of confidentiality which may emerge from the investigation." *Id.* pt. IX.1, para. 12.1.

<sup>107</sup> See *Report of the Organisation on the Implementation of the Convention, C-II/2/Rev.2* and Corr.1, para. 2.8 (Dec. 5, 1997) (visited Feb. 7, 2000) <<http://www.opcw.org/cii/cii-2r.htm>> [hereinafter *Report on Implementation*]. Some issues that were unforeseen in the preparatory phrase have arisen. The sheer volume of data processed and sent to states parties regarding declaration information has imposed a "substantial additional workload on the Declarations and Confidentiality Branches in the Verification Division." *Id.* Plus, there is a great security risk involved in generating large volumes of classified information in hard copy form. See *id.*

<sup>108</sup> See *id.* para. 2.22(g).

<sup>109</sup> See *Report of the Fourth Session of the Conference of the States Parties, OPCW C-IV/6*, para. 10.2 (July 2, 1999) (visited Feb. 7, 2000) <<http://www.opcw.org/civ/civ6.htm>>.

<sup>110</sup> See *Report on Implementation, supra* note 107, para. 2.16.

<sup>111</sup> See *id.* para. 2.16(b).

<sup>112</sup> See *id.* para. 2.16(c).

information.<sup>113</sup> This procedure will ensure that information sent by states does not end up in the wrong hands or that it does not pass through many different channels before being delivered to the Confidentiality Branch.

The OPCW has had some bureaucratic and administrative difficulties with its confidentiality system. Perhaps these difficulties suggest that the IAEA should follow a policy somewhere in between the top-down approach of the OPCW and the vague, indeterminate course of the IAEA's current policy.

#### IV. SOLUTIONS AND THEIR PRACTICAL VIABILITY

Allegations that weapons inspections conducted by UN organizations are merely covers for intelligence gathering missions are rampant.<sup>114</sup> The IAEA must take immediate action to restore confidence in its activities or risk losing the major tool (nuclear facility inspections) used to accomplish the goals of the Agency.<sup>115</sup> This section will chronicle the steps currently being taken by the IAEA in response to these allegations and will also propose possible solutions to the "confidentiality crisis."

There are several general ways in which the IAEA could maintain the integrity of confidential materials gained through nuclear facility inspections. First, the Agency could raise barriers to keep staff members from leaking or selling confidential information gained in their official capacities. Second, the Agency could attempt to decrease the black market demand for confidential materials. Finally, the IAEA could increase incentives for staff members, which would encourage them not to disclose sensitive information. I propose that a combination of these general solutions, in conjunction with the actions presently being taken by the IAEA, would decrease significantly the risk of confidentiality breaches.

---

<sup>113</sup> *See id.*

<sup>114</sup> *See supra* Part II.

<sup>115</sup> "The Agency carries out most of its inspections and other safeguards activities under agreements concluded pursuant to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), which requires each non-nuclear-weapon State party to the Treaty to declare and submit to Agency safeguards all the nuclear material in all peaceful nuclear activities carried out within the territory of the State, under its jurisdiction or under its control anywhere." *IAEA Press Release: Implementation of IAEA Safeguards in 1997* (Nov. 13, 1998) <[http://www.iaea.org/worldatom/Press/P\\_release/pr\\_archive.shtml](http://www.iaea.org/worldatom/Press/P_release/pr_archive.shtml)>, then click on *Implementation of IAEA Safeguards in 1997*.

*A. Current Attempts by the IAEA to Reduce Breaches of Confidentiality*

In a lecture to an international law class at the University of Georgia, the director of the IAEA's legal division highlighted the problems that the IAEA faces because of its unique obligations.<sup>116</sup> First, the Agency has an obligation to each of its member states.<sup>117</sup> Second, the IAEA has an internal relationship with and obligation to its staff members.<sup>118</sup> While the Agency has immunity from defending actions, member states have asked for assurances that the Agency would waive its immunity if one of the Agency's employees were to disclose confidential materials.<sup>119</sup> While the IAEA claims to be unable to provide such an assurance, it did offer to confirm that its staff members are aware that confidentiality breaches are very serious matters.<sup>120</sup>

In an effort to highlight its strong stance on confidentiality matters, the Secretariat of the Agency issued a Notice Concerning Obligations to Protect Confidential Information ("the Notice") to all staff members.<sup>121</sup> The Notice has three goals. First, it serves to remind staff members of their obligations, under both the statute of the IAEA and the Provisional Staff Regulations, not to disclose confidential information.<sup>122</sup> Second, the Notice sets forth the procedure to be followed in the event of a complaint of unauthorized disclosure.<sup>123</sup> There are several disciplinary procedures that may be invoked by the Agency in the event of a breach of confidentiality. One is to take internal disciplinary action such as written censure, suspension without pay,

---

<sup>116</sup> Larry D. Johnson, Legal Advisor and Director of the International Atomic Energy Agency's Legal Division, Address to University of Georgia, International Law I Class (Oct. 12, 1998) (on file with *The Georgia Journal of International and Comparative Law*).

<sup>117</sup> *See id.*

<sup>118</sup> *See id.*

<sup>119</sup> *See id.*

<sup>120</sup> *See id.*

<sup>121</sup> *See Obligations to Protect Confidential Information*, IAEA Doc. SEC/NOT/1742 (Aug. 7, 1998) (on file with *The Georgia Journal of International and Comparative Law*).

<sup>122</sup> *Id.* paras. 2-4. Paragraph four of the Notice reminds staff members that their "obligation to protect the confidentiality of such information continues after the staff [members'] employment with the Agency" pursuant to Provisional Staff Regulation 1.06.

<sup>123</sup> *Id.* paras. 6-12. Once the Agency receives a complaint from a Member State alleging improper conduct by an IAEA staff member, the Director General will initiate an investigation. *See id.* para. 7. After the investigation is concluded, the Director General shall report his conclusions to the state concerned and decide whether to implement disciplinary action under Provisional Staff Rule 11.01.1. *See id.* paras. 8-10.

demotion, dismissal, or summary dismissal.<sup>124</sup> Another disciplinary measure is outlined in Staff Rule 13.03.4.<sup>125</sup> This rule allows the Agency to be reimbursed by a staff member “either partially or in full for any financial loss suffered by the Agency as a result of his/her negligence or of his/her having violated any regulation, rule or administrative instruction.”<sup>126</sup> Finally, in the event of an intentional or grossly negligent disclosure without the proper authorization, the Director-General may waive any immunity that pertains to the individual.<sup>127</sup> Then, “criminal or civil legal proceedings could be initiated against a staff member, or former staff member, in any applicable national jurisdiction. . . .”<sup>128</sup>

The purpose of the Secretariat Notice is to request that all staff members sign a “Confidentiality Undertaking” prepared by the Agency.<sup>129</sup> The undertaking contains provisions analogous to those set forth in the Notice itself and is intended to “underscore to all staff members the importance of the safekeeping and handling of secret or confidential information coming to the individual’s knowledge as a result of his/her work with the Agency.”<sup>130</sup>

Soon after issuing this first Notice requiring staff members to sign the Confidentiality Undertaking, the Agency released a second Secretariat Notice.<sup>131</sup> The second notice was issued to respond to two concerns raised by a number of staff members with respect to the Confidentiality Undertaking.<sup>132</sup>

<sup>124</sup> *Id.* para. 6 (referencing Staff Rule 11.01.1). It is noted that in the event of summary dismissal, the staff member would forfeit any termination indemnity, repatriation grant, or end-of service allowance to which he is otherwise entitled. *See id.* para. 10.

<sup>125</sup> *See Obligations to Protect Confidential Information, supra* note 121, para. 11 (describing Staff Rule 13.03.4).

<sup>126</sup> *Id.*

<sup>127</sup> *See id.* para. 12.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.* para. 13.

<sup>130</sup> *Id.* The Confidentiality Undertaking provides in part, “I understand: (a) that a breach of my obligation not to disclose confidential information without appropriate authorization, as provided for in the terms and conditions of my employment with the Agency, including this Undertaking, may result in the imposition of disciplinary measures as provided for in the Provisional Staff Regulations and the Staff Rules.” *Obligations to Protect Confidential Information, supra* note 121, Attachment 1, para. 4 (Confidentiality Undertaking for Staff Members).

<sup>131</sup> *See Obligations to Protect Confidential Information, Addendum 1, IAEA Doc. SEC/NOT/1742 Add.1 (1998)* (on file with *The Georgia Journal of International and Comparative Law*).

<sup>132</sup> *See id.* para. 3.

The first concern took issue with provision 4(b) of the undertaking<sup>133</sup> that provides:

that legal proceedings could be initiated against me [the staff member] in any applicable national jurisdiction, during or after my employment with the Agency, in the event of a breach of my obligation not to disclose confidential information without appropriate authorization, and that, for such purpose, the Director-General may waive any immunity which may pertain to me.<sup>134</sup>

Staff members felt that by signing the undertaking they were, in effect, waiving any applicable defenses and were "inviting Member States to take legal action against [them]" in the case of confidentiality breaches.<sup>135</sup> The second Secretariat Notice addressed this concern by assuring staff members that provision 4(b) referred only to the possibility of a waiver of an individual's immunity "in order to allow *the Agency* to initiate, if necessary, legal proceedings. . . ."<sup>136</sup>

The second concern of staff members was that the Agency did not have a system in place to identify what information was considered to be confidential.<sup>137</sup> In response, the Agency reiterated that the obligation to protect confidential materials was "not a new one."<sup>138</sup> The Agency did concede, however, that its procedures for classifying confidential materials perhaps needed to be reviewed.<sup>139</sup>

Since the Agency maintains that the Confidentiality Undertaking is merely a restatement of the existing obligations of its staff members, it is necessary to determine what these confidentiality obligations are. Two major bodies of authority exist on this subject. The first is the statute creating the IAEA.<sup>140</sup> The statute provides that duties of the staff members of the IAEA include refraining from "any action which might reflect on their positions as officials of the Agency" and not disclosing "any industrial secret or other confidential

<sup>133</sup> *See id.*

<sup>134</sup> *Obligations to Protect Confidential Information*, *supra* note 121, Attachment 1.

<sup>135</sup> *Obligations to Protect Confidential Information*, Addendum 1, *supra* note 131, para. 3(a).

<sup>136</sup> *Id.* para. 4 (emphasis added).

<sup>137</sup> *See id.* para. 3(b).

<sup>138</sup> *Id.* para. 1 (note the paragraph cited is the *second* para. 1; presumably this is due to an error in numbering in the document).

<sup>139</sup> *See id.*

<sup>140</sup> Statute of the International Atomic Energy Agency, *supra* note 24.

information coming to their knowledge by reason of their official duties for the Agency.”<sup>141</sup>

The second body of authority on this subject is the Agreement on Privileges and Immunities of the Agency (“the Agreement”).<sup>142</sup> The Agreement, approved by the Agency’s Board of Governors on July 1, 1959, sets forth the legal capacity of the Agency, its employees, and the representatives of members working with the Agency.<sup>143</sup> Article VI of the Agreement specifically deals with the privileges and immunities afforded to “Officials” employed by the IAEA.<sup>144</sup> “Officials,” for the purposes of the Agreement, have been defined as “the Director General and all members of the staff of the Agency except those who are locally recruited and assigned to hourly rates.”<sup>145</sup> Pursuant to the Agreement, inspectors, as officials of the Agency:

shall be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity . . . [and further] while exercising the functions of inspector under Article XII of the Statute of the Agency . . . and while traveling in their official capacity en route to and from the performance of these functions, enjoy all the additional privileges and immunities set forth in Article VII of this Agreement so far as is necessary for the effective exercise of such functions.<sup>146</sup>

---

<sup>141</sup> *Id.* art. VII, para. F; *see also supra* Part I.C.

<sup>142</sup> *Agreement on the Privileges and Immunities of the Agency*, IAEA Doc. INF/CIRC/9/Rev.2 (July 26, 1967) <<http://www.iaea.org/worldatom/infcirc/inf9r2.html>>.

<sup>143</sup> *Id.* Article XV of the Statute of the International Atomic Energy Agency required that the legal capacity, immunities, and privileges of the Agency and its staff be defined in a separate agreement between the Agency and the members. *See* Statute of the International Atomic Energy Agency, *supra* note 24, art. XV, para. C.

<sup>144</sup> *Agreement on the Privileges and Immunities of the Agency*, *supra* note 142, art. VI.

<sup>145</sup> *Id.* art. I(v).

<sup>146</sup> *Id.* art. VI, sec. 18(a)(i). Article VII, with respect to “Experts on Missions for the Agency,” provides as follows:

Section 23. Experts (other than officials coming within the scope of Article VI) serving on committees of the Agency or performing missions for the Agency, including missions as inspectors under Article XII of the Statute of the Agency and as project examiners under Article XI thereof, shall be accorded the following privileges and immunities so far as is necessary for the effective exercise of their functions, including the time spent on journeys in [connection] with service on such committees or missions:

(a) Immunity from personal arrest or detention and from seizure of their personal baggage;

However, the Agreement explicitly qualifies this grant of immunity by stating:

Privileges and immunities are granted to officials in the interest of the Agency only and *not for the* personal benefit of the individuals themselves. The Agency shall have the *right and the duty to waive the immunity* of an official in any case where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Agency.<sup>147</sup>

The Board of Governors wished to make clear at the Agency's inception that the privileges and immunities afforded to individuals could be waived. This supports the Agency's position set forth in the Confidentiality Undertaking. The Agency has the authority to waive any immunity that pertains to a staff member allegedly in breach.<sup>148</sup> The second Secretariat Notice interpreted this waiver to apply to circumstances in which the *Agency* may waive immunity of the individual so that the *Agency* could institute proceedings against the person in question.<sup>149</sup>

Despite the Agency's interpretation, it still remains unclear whether the Agreement on Privileges and Immunities (quoted above) allows member states to also institute proceedings against a staff member in the event of an unauthorized disclosure.

The vagueness of the Privileges and Immunities Agreement waiver provision appears to harm the confidentiality mission of the IAEA in two ways. First, it offers no specific guidelines to which staff members must adhere, and it provides no protections for staff members in cases of accidental

(b) In respect of words spoken or written or acts done by them in the performance of their official functions, immunity from legal process of every kind, such immunity to continue notwithstanding that the persons concerned are no longer serving on committees of, or employed on missions for, the Agency;

(c) Inviolability for all papers and documents;

(d) For the purposes of their communications with the Agency, the right to use codes and to receive papers or correspondence by courier or in sealed bags; . . .

*Id.* art. VII.

<sup>147</sup> *Id.* art. VI, sec. 21 (emphasis added).

<sup>148</sup> *Obligations to Protect Confidential Information*, *supra* note 121, Attachment 1, para.

4(b).

<sup>149</sup> See *supra* notes 127-136 and accompanying text.



disclosures.<sup>150</sup> Second, the vague promise of a waiver of immunity when “immunity would impede the course of justice” offers little assurance to member states that there will be concrete consequences to any disclosure of their confidential materials.<sup>151</sup>

*B. Possible Future Actions to Decrease the Risk of Unauthorized Disclosures From Within the IAEA*

The two main weaknesses of the current policy of the IAEA are the lack of a detailed procedure to be followed in the event of a breach and the lack of a comprehensive system to uniformly classify information as confidential.<sup>152</sup> Because of the inherent deficiencies in the current system of the IAEA, correcting these weaknesses may require drastic political action, such as amending the statute of the IAEA to provide for a comprehensive confidentiality regime or undertaking a new multilateral agreement between the IAEA and its member states to provide for breach procedures.<sup>153</sup> Amendments to the statute of the IAEA may be proposed by any member.<sup>154</sup> The amendment will take effect once a two-thirds majority of the General Conference approves it<sup>155</sup> and two-thirds of the member states accept it in accordance with their respective constitutional procedures.<sup>156</sup> Alternatively, the Agreement on the Privileges and Immunities of the Agency leaves open the possibility that new agreements can be entered into between the Agency and any member states to

---

<sup>150</sup> Many staff members protested having to sign the Confidentiality Undertakings and voiced the concerns detailed above. These concerns suggest that staff members are confused about their prospective liability under the undertaking in the event of a confidentiality breach. See *Obligations to Protect Confidential Information*, Addendum 1, *supra* note 131, para. 3. Staff members have also suggested (and the Agency recognizes that its procedures on this subject may well need to be reviewed) that guidelines to determine what materials are to be classified as confidential are insufficient. See *id.*

<sup>151</sup> See *Agreement on the Privileges and Immunities of the Agency*, *supra* note 142, art. VI, sec. 21.

<sup>152</sup> See *supra* Part IV.A. (detailing the second notice issued by the IAEA Secretariat).

<sup>153</sup> The statute of the IAEA does not explicitly provide for the formulation of multilateral treaties as a function of the Agency. However, “it is apparent from the objective of the Agency ‘to accelerate and enlarge the contribution of atomic energy to peace, health and prosperity throughout the world’ may in some instances be furthered by the conclusion of multilateral treaties among its Members.” Statute of the International Atomic Energy Agency, *supra* note 24, art. II.

<sup>154</sup> See *id.* art. XVIII, para. A.

<sup>155</sup> See *id.* art. XVIII, para. C(i).

<sup>156</sup> See *id.* art. XVIII, para. C(ii). Note that if a member cannot accept an amendment to the statute, it may, upon written notice, withdraw from the Agency. See *id.* art. XVIII, para. D.

amend the current rights afforded by the Agreement.<sup>157</sup> These may take the form of "supplemental agreements adjusting the provisions of this [Privileges and Immunities] Agreement" or an agreement "extending or curtailing the privileges and immunities thereby granted."<sup>158</sup>

The Agency has the ability procedurally to create a new policy on confidentiality. Substantively, however, what should this policy include? Amending the statute or drafting a new multilateral treaty would give the Agency the opportunity to systematically clarify and strengthen the current breach policies over the long term. One major goal of the Agency should be to identify criteria and levels of sensitivity in listing information as confidential.<sup>159</sup> An invaluable resource in constructing such a network is the OPCW's Classification System discussed above in Part III.<sup>160</sup> Establishing such a procedure would eliminate all doubt on the part of staff members, the Agency, and member states as to what information is to be protected.

A second obvious goal should be to set specific and detailed procedures to be followed in the event of a breach. This policy would work with the current breach policies to add more detail and clarity and to provide mandatory steps for the Agency to follow in the event of an unauthorized disclosure.<sup>161</sup> Such a procedure should set out judicial measures available to member states and should explain in what circumstances these measures may be initiated. The procedure should also take into account that because staff members are only employed for brief periods of time with the IAEA, enforcement of the rules is especially critical *after* employment ends.<sup>162</sup> Punitive measures should be created to deal with former staff members as well as current staff members.<sup>163</sup>

---

<sup>157</sup> See *Agreement on the Privileges and Immunities of the International Atomic Energy Agency*, *supra* note 142, art. XI, sec. 36.

<sup>158</sup> *Id.*

<sup>159</sup> See *Obligations to Protect Confidential Information*, Addendum 1, *supra* note 131, para. 3(b) (identifying the need for an adequate and uniform procedure to classify documents as confidential).

<sup>160</sup> See *Guidelines*, *supra* note 68, pt. V (setting out the details of the OPCW Classification System for Confidential Information).

<sup>161</sup> See *supra* Part IV.A (detailing the current breach procedures of the IAEA).

<sup>162</sup> See generally SZASZ, *supra* note 7, at 765 (noting that most staff members of the IAEA are not given permanent positions in an effort to maintain geographic diversity within the Agency).

<sup>163</sup> One current policy of the IAEA, set out in Staff Rule 13.03.4, allows the Agency to recover from a staff member reimbursement for financial loss sustained by the Agency because of an unauthorized disclosure. See *Obligations to Protect Confidential Information*, *supra* note 121, para. 11 (citing Staff Rule 13.03.4). While the practicality of this provision may be questionable, its language evidences that current breach policies are not applicable to former staff members, only to currently employed staff members. All breach policy and procedures

Again, the OPCW's Breach Policy will be a helpful working model for the proposed changes, especially if the IAEA discards the aspects of the OPCW Policy that have not been successful.<sup>164</sup>

A new treaty or amendment might also provide for increased staff education on matters of confidentiality and how best to safeguard sensitive materials. Such training would be important in orienting staff members and administrators alike to the new confidentiality rules and procedures to be followed. Once more concrete rules of procedure have been established, adherence to these rules can be enforced.

Finally, in promulgating new rules, the Agency should strive to take a more active role not only in the leadership and implementation of the rules but also in the responsibility of preventing unauthorized disclosures. Showing that the Agency is serious about protecting confidential information may restore confidence in the nuclear facility inspection system.

While these are general goals toward improving the long-term effectiveness of the Agency, more immediate solutions are needed to improve the day-to-day operations of the IAEA. One possibility includes petitioning the International Court of Justice (ICJ) to issue an advisory opinion regarding the proper interpretation of the Agreement on Privileges and Immunities of the Agency.<sup>165</sup> More specifically, the ICJ should focus on the provision providing that "the Agency shall have the right and duty to waive the immunity of any official in any case where, in its opinion the immunity would impede the course of justice. . . ."<sup>166</sup> Such an opinion by the court should address the circumstances in which the Agency can waive a staff member's immunity and whether member states can also initiate legal proceedings against the accused staff member.<sup>167</sup> Alternatively, because the Agency has not established a

---

should be made legally applicable to former staff members by virtue of their employment contract with the Agency. For example, a policy to invalidate former staff members' pension or other post-employment benefits may be a useful tool to deter confidentiality breaches.

<sup>164</sup> See *Guidelines*, *supra* note 68, pt. IX (detailing OPCW breach procedures).

<sup>165</sup> See *Agreement on the Privileges and Immunities of the Agency*, *supra* note 142, art. X, sec. 34 (stating that "all differences arising out of the interpretation or application of the present Agreement shall be referred to the International Court of Justice . . .").

<sup>166</sup> *Id.* art. VI, sec. 21.

<sup>167</sup> See *Obligations to Protect Confidential Information*, Addendum 1, *supra* note 131, para. 4 (raising the confusion and concern about a staff member's liability under the IAEA Confidentiality Undertaking that is claimed to be a restatement of the staff members obligations partially based on the Agreement on Privileges and Immunities of the Agency). It should also be noted that "[t]he Agency has never agreed to the submission of any dispute to a national court, either in the abstract with respect to specified future controversies or with reference to any current matter." SZASZ, *supra* note 7, at 950.

general policy regarding the granting or refusals of waivers, the proposed supplemental agreement to the Privileges and Immunities Agreement of the Agency could also delineate such a policy.<sup>168</sup>

Another immediate solution involves action by the Agency to reduce the amount of confidential material collected and brought to the Agency by facility inspectors. As was noted with respect to the OPCW's Policy, the less sensitive information collected, the less information the Agency must protect from disclosure.<sup>169</sup> This could be accomplished in conjunction with the long-term goal of establishing a "Confidentiality Classification System." Only materials that are absolutely necessary should be removed from the inspection facility and transported to the Agency. Access to materials identified with higher levels of sensitivity should be severely restricted.

Relatedly, a third immediate solution is to allow access to confidential materials on a strictly "need-to-know" basis.<sup>170</sup> One recent suggestion to reduce inspectors' access to information is to implement a policy of "Remote Monitoring."<sup>171</sup> Unattended, remote monitoring includes the installation of "digital surveillance cameras, electronic seals and motion and radiation detectors" at nuclear facility inspection sites.<sup>172</sup> Information from the surveillance equipment would be transferred using a remote data transmission connected by a satellite link to the Agency in Vienna.<sup>173</sup> While this idea has been suggested and tested in conjunction with maintaining the safety of weapons in specific facilities,<sup>174</sup> it could also have application in the facility inspection arena. Once a nuclear power facility has been identified, remote surveillance equipment could be installed to ensure that the facility is not used for the purpose of making weapons. This would permit "reductions in inspection frequency and effort" and because surveillance would be monitored

---

<sup>168</sup> See *id.* at 980.

<sup>169</sup> See *supra* Part III.B (detailing the strengths of the OPCW Policy on Confidentiality).

<sup>170</sup> This solution is complicated by the practical concern that one may not immediately know the information or document is confidential. For example, a document submitted to the Agency in a foreign language may have to go through several hands, including translators, before the document's confidentiality can be assessed. A strong classification policy may eliminate some of the confusion in cases like this, but there are still unusual situations requiring the discretion and judgment of staff members. Evaluation of these cases should proceed on a case-by-case basis.

<sup>171</sup> See Dirk Schriefer, *New Safeguards Measures: Initial Implementation and Experience*, 38(4) IAEA Bulletin, Q. J. INT'L ATOM. ENERGY AGENCY 2 (visited Apr. 18, 2000) <<http://www.iaea.org/worldatom/Periodicals/Bulletin/Bull384/schrief.html>>.

<sup>172</sup> *Id.*

<sup>173</sup> See *id.*

<sup>174</sup> See *id.*

by computers, this procedure would greatly limit staff member access to sensitive materials.<sup>175</sup> Obviously, this system would not be effective in a country like Iraq that is constantly moving its nuclear capabilities to dodge inspection efforts.<sup>176</sup> However, this may be an option in states with less controversial nuclear energy programs.

Another immediate solution is to increase the incentives for staff members to (1) not deliberately leak confidential information and (2) take extra precautions when handling highly sensitive materials in order to prevent accidental disclosure. One way to accomplish this would be to implement, through Agency staff regulations, a reward/benefit system that is based on a staff member's demonstrated ability to safely handle confidential materials.<sup>177</sup>

A second incentive has been suggested by author Paul C. Szasz.<sup>178</sup> Szasz notes that "[t]he most significant difference between the staff administration of the Agency. . . and that of the United Nations . . . is that in the Agency, by reason of an express policy anchored in the Statute, the permanent international civil servants represent only a modest fraction of the staff."<sup>179</sup> The inference follows that employees with life tenure have much more to lose by breaking the Agency's rules.<sup>180</sup> Thus, alternative employment practices may

---

<sup>175</sup> *Id.* Two such surveillance systems were installed in a facility in Switzerland in January 1996. *See id.* The program was to include a total of five facilities in Switzerland by the end of 1997 with future expansion proposed in the United States and in South Africa. *Id.*

<sup>176</sup> United States diplomats charge that "since the end of the Persian Gulf War, Baghdad's government has tried to hide as much of its nuclear arms program as possible by moving key items into temporary storage." Goldman & Kempster, *supra* note 31. On one occasion, inspectors informed the UN that while they were physically barred from entering a suspected nuclear facility, they observed "frenzied activity" involving "cranes, trucks, and forklifts hurriedly moving materials from the site." *Id.*

<sup>177</sup> This suggestion is modeled after the policy of the OPCW that provides that in performance evaluations, "specific attention shall be given to the employee's record regarding protection of confidential information." Chemical Weapons Convention, *supra* note 66, para. 12. The current practice of the Agency is that incremental payment increases are awarded each year on the basis of "satisfactory service." SZASZ, *supra* note 7, at 78 (citing Staff Rule 5.01.3(B)). "Satisfactory service" is vaguely and broadly defined as "satisfactory performance and conduct of staff members in their assignments as evaluated by their supervisors." *Id.*

<sup>178</sup> *See* SZASZ, *supra* note 7, at 78.

<sup>179</sup> *Id.* at 765. Szasz notes that this is a deliberate departure from recommendations made by the UN that "the major part of the staff of [the] organization should consist of persons making their careers in it." *Id.* The Agency departed from the protocol of the UN because it feared that the scientists on its staff would "lose touch with developments in their fields if immured for too long in the Agency." *Id.*

<sup>180</sup> Currently, "[i]n view of the relatively brief service of most staff members with the Agency, the question of promotion does not [even] play an important role in the Staff Regulations." *Id.* at 777.

need to be investigated because both promotions and salary raises could potentially be large incentives to encourage staff members to uphold the Agency's policy on confidentiality.

#### V. SUMMARY—WHY IS CHANGE SO DESPERATELY NEEDED?

States have a right to be concerned because weapons and nuclear facility inspections are viewed as an infringement on both a state's national sovereignty and security.<sup>181</sup> By their nature, nuclear power plant designs are highly secretive and are extremely expensive to build. When an inspector visits, many states fear that these design secrets, in which they have invested a great deal of time and money, are vulnerable.<sup>182</sup>

The present confidentiality regime of the IAEA is vague and ineffective. Staff members who protested signing the proposed Confidentiality Undertaking are confused and uncertain about what the terms of the Agency's breach policy are.<sup>183</sup> To have an effective policy in which both staff members and state members can have confidence, this confusion needs to be alleviated. The Agency needs a clear procedure to be taken in the case of unauthorized disclosures.

The Agency's current regime also lacks a detailed procedure on classifying confidential materials.<sup>184</sup> If a staff member is unclear whether a particular document is confidential, then protection of that document is made particularly difficult.<sup>185</sup> A staff member cannot take action to protect against disclosure if he does not believe the information to be confidential. The Agency should make this judgment in a uniform and consistent manner instead of leaving it up to individual inspectors.

Finally, because of these two major weaknesses in the Agency's policy on confidentiality, the IAEA has left nuclear facility and weapons inspections

---

<sup>181</sup> See SCHEINMAN, *supra* note 2, at 72.

<sup>182</sup> See Johnson, *supra* note 116.

<sup>183</sup> See *Obligations to Protect Confidential Information*, Addendum 1, *supra* note 131, para. 3(a) (noting staff members' concerns about their liability under the terms of the Confidentiality Undertaking).

<sup>184</sup> See *id.* para. 3(b) (citing staff members' concerns about a lack of an adequate confidential information classification system); see also *id.* para. 1 (the fifth paragraph, incorrectly labeled number 1) (addressing the need to review the Agency's current classification policies).

<sup>185</sup> Arguably, Provisional Staff Regulation 1.06 provides all of the guidance necessary in that it defines staff members' obligations to protect "any information known to them by reason of their official position *which has not been made public. . .*" *Id.* para. 3 (referring to Provisional Staff Regulation 1.06) (emphasis added). Therefore, *any* information gained as a result of a staff member's official duties is confidential so long as it has not been made public by the Agency.

vulnerable to negative press and political subversion.<sup>186</sup> A lack of confidence in the IAEA practices will lead to less cooperation by member states as well as an overall decrease in the Agency's productivity and effectiveness.<sup>187</sup> Therefore, immediate actions, whether consistent with the suggestions made above or of a different nature, need to be undertaken in order to preserve the Agency's most powerful tool—nuclear facility inspections.

---

<sup>186</sup> See *NBC Nightly News: Spy Story* (NBC television broadcast, Jan. 7, 1999); see *supra* Part II.

<sup>187</sup> This decrease in effectiveness is exhibited in Iraq's continued refusal to cooperate with IAEA and UNSCOM inspection procedures as well as repeated allegations of espionage within the international organizations that require weapons inspections. See *supra* Part II.

