

Governance in the international security arena:

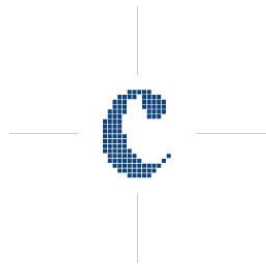
A role for non-state stakeholders as co-providers of security

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Introduction

Security is a global public good. State-level actors are generally doubtful and at least ambiguous towards any role of non-state stakeholders in security. However, states which are called upon to provide security, both to their citizens nationally and for the wider international community, have to connect with non-state actors. For the purpose of this paper these are identified as Non-state security stakeholders (NSSS). Some of these actors may be the subject of security concern. That is because they are confused with entities intent on terror, as exemplified by “9/11” (2001); this was and remains just one albeit major event in a long chain of non-state-controlled major interruptions to security that will not end soon. But many actors of non-state origin do play another role and contribute to security, both nationally and globally.

As far as such actors do not have formal legitimacy for providing security and as their primary function is not effective security as monitored by the state, this ambiguous (or dual) role of NSSS can also provide for opportunities. Governmental policymakers and those implementing policies may benefit by viewing NSSS as partners.

Only recently has research broadened into this particular sub-area of security, while in the humanitarian and environmental fields non-governmental organizations have for some decades played an increasingly political and media-covered role. But non-state contributions to security as a research field is still only beginning to attract attention. Possibly this is so because what state authority can reliably deliver in security terms has its limitations. This has been recognized as a societal sea change that is operating when networks, individuals and groups have come to the fore where formal institutions and conventions used to provide the social backbone for citizens depending on predictable conditions.

The paper uses seven key analytical concepts, taken from research literature. The seven concepts help to measure the role of NSSS: Governance, Legitimacy, Self-regulation, an Implementing (as opposed to a mere monitoring) role of Non-state stakeholders, Differences among the various

types of these stakeholders comparing them to state agents in intrinsic values and expectations by the wider public, Accountability and, finally, (the degree of) Confidence that may be placed in a Non-state actor as a ‘security partner’ for a longer period of time and beyond a specific incident or series of incidents or risks.

I was inspired by my personal experience as the Netherlands Permanent Representative to the Organization for the Prohibition of Chemical Weapons (2005-2008). This I verified by sampling research literature and connecting related fields of other security regimes to the argumentation. As my previous academic experience was at university level in the 1960s and 70s, I have based myself on a very personal methodology with a strategic diplomat’s perspective. I hope that presenting matters from an unusual angle will help to address the functions of international security where state and non-states are partners and connect the dots ‘waiting to be so connected’.

My thanks are extended to Professor Dr Ko Colijn and Mr Sico van der Meer of the Security Programme at Clingendael and to Dr Niels van Willigen of Leiden University, for comments on earlier drafts of this paper. The Clingendael Institute, notably its librarians, have helped with source material and Dr Eric Myjer of Utrecht University’s Faculty of Law, who is Professor of security and arms control law, has provided academic and practical support.

All views expressed in this paper are those of the author personally. This paper does not reflect current or past Dutch policies.

The terms of a debate

Policy making by the state, which is needed for providing security both in the national and the international arena, takes the non-governmental actor for granted. It does not now recognize, however, that such an actor may be a potential “co-provider of security”. Research literature does not explicitly refer to a security partner which is not a state agent, leaving aside the Private Military Companies or private security services, both working on a formal contractual basis and hired to do a job as specified.

An analysis of the real practice within the social and economic relations in which society expresses itself does show, however, that contributions by non-state actors are implicitly recognized both from the non-state perspective as from the state level. The example of the state legislating and enforcing relationships with industry, laboratories, academic and research institutions are illustrations of this. Next to state authority, they play their role in preventing the proliferation of arms or weapons of mass destruction including their possible terrorist use. Governments, while designing and executing security policies, do in fact factor-in their own limitations. They presume that certain capabilities are contributed by *non-state stakeholder in security*.

As the term *non-state actor* may all too easily be associated with illegal activity, this paper uses a specifically coined term: “non-state security stakeholder” (in short: NSSS). The term means that a certain category of non-state actors provides a constructive and contributing role. It covers a wide range including industry, trade, laboratories, researchers and academia, as well as other non-governmental organizations involved in security matters. While they may be subject to state-level scrutiny at times, they may also be presumed to contribute to security and to have implicitly (or otherwise) entered into a cooperative relationship with the state.

The limitations of such a (NSSS) role are clearly spelled out by the researchers Shepard Forman and Derk Segaar who wrote “Although private involvement in global public affairs is generally viewed positively, it too raises important

questions of appropriateness and sustainability. Even as governments and foundations actively promote public-private partnerships and even direct private sector engagement, we know relatively little about the long-term consequences of private actors in unregulated international public spaces. The conventional wisdom is that NGOs are progressive, increase diversity and participation, advocate for and provide improved services, and hold public sector actors accountable, but they too are characterized by asymmetries in power and interests, are in the end accountable only to their donors and their boards of directors (and hence to themselves), and suffer the paradox of potentially relieving the public sector of its responsibilities". (*New Coalitions for Global Governance: The changing dynamics of multilateralism-Global governance 2006*, 12, 205-225).

Such stakeholders perform a so-called anchoring role for any international regime so that it is able to carry out a reality check. This link has been commented upon by the Netherlands Advisory Council on International Affairs (AIV) in the following terms:" It should also be remembered that companies do not always help to further UN goals, despite its claimed commitment to corporate social responsibility and voluntary codes of conduct. It is therefore important to ensure that initiatives such as the (UN) Global Compact are not simply used for PR purposes. Companies must be encouraged to practice self-regulation. If this does not work, binding regulations may be required, even if they are only applied to companies beyond the critical reach of the internet and the countervailing power of consumers and their organisations". And the AIV concludes: "It is important for international organisations to remain outward looking. NGO's, companies and the private sector can play a crucial role in this process, partly by helping them to identify key issues, warning them when they risk becoming too esoteric or introspective in addressing certain problems, and denouncing unnecessary red tape. NGO's, companies and the private sector are also vital links between the wider, global political perspective and everyday local and regional concerns." (*Advisory report 51, 2006: The role of NGO's and the private sector in international relations*; see also *the UN Global Compact* which is a strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, the environment and anti-corruption).

A transition from the wider category of non-state actors, which applies to many international fields, to a more specific security (and arms control/disarmament) focus is facilitated by Alison Bailes (SIPRI 2006). She sheds some light on the further complexities involved:

"Aside from public employees and members of civic society, corporate enterprises and employees are also active in practically every one of these fields, not excluding (at the traditional end of the spectrum) the provision of combat services. [...] Most commentators have focused on the problems posed for states, and for multilateral organizations, by these actors when they play negative roles: and these problems are indeed serious. Very few of the groups

and individuals involved can be deterred, and not many more can be negotiated with, in the style of Westphalian diplomacy. Traditional military intelligence is not adapted to anticipating and tracking their activities and—as the past few years have abundantly shown—traditional military resources do not perform well in eliminating them. When it comes to risks like disease, aberrations of nature and infrastructure problems not attributable to human intent, techniques for risk analysis and early warning are at best scattered among different expert communities and unevenly developed around the world, and at worst may simply be undeveloped. The sheer variety of types of risk to be assessed and prioritized poses enormous problems in itself for policy development and resource allocation. A question that follows from this, but which has yet to be fully explored, is how to mobilize the positive potential of new actors within the security community.”

“One challenge that has already been singled out is how to coordinate all the different groups whose skills may be needed to tackle a complex domestic emergency or to carry out a successful conflict intervention and peace-building operation. A more generic problem is that non-military actors are by definition not subject to military discipline or even—if in the private sector—to the obligations of public service. They do not have the equivalent of the armed forces’ trained reserves and much larger mobilization capacities. They do not come free of charge, aside from citizens’ voluntary associations. A government or institution trying to activate mixed military and civilian, public and private sector teams for a single security cause thus has to operate in multiple modes and under multiple rules. Another complicating factor is that almost every state in the world has options for drawing upon resources at levels other than the purely national: they can turn to (more or less integrated) regional communities of fellow states, to the universal community of the UN and its agencies or to ad hoc groups of countries (and private sector entities). The point to note here is **“the growing vertical range of different types of actors with which a modern government can choose to work. Finding the right level or combination of levels for tackling a given defensive need or active task—or, to use EU parlance, the art of subsidiarity in the security field—is a skill that many are still only slowly and haltingly acquiring”** (Introduction by Alison Bailes, SIPRI Yearbook 2006). (emphasis added) .

It is precisely this right level, or combination of levels, that may become more explicit when devising policies that have to rely partly on non-state stakeholders in security.

Using the concept of Governance in the international security arena presumes an analysis of the relevant actors and of their mutual relationships. States are the main actors in providing security, but they are simply not the only actors here. On the one hand, individual citizens or groups thereof (loosely or closely-knit) or corporations may overall be passive spectators or they may become active participants; in both cases they will be ‘consumers of security’ as a

public(-private) good. Industry, trade, non-governmental organizations and other non-state institutions may play a role which is best described as that of a “co-provider of security”, or at least a “contributing role” to security.

The roles of such *non-state stakeholders in security, which may include issue oriented coalitions*, are less studied than the traditional ones of states or state-level multilateral organizations acting in the security arena.

Is this because a state is intrinsically reluctant to engage, as an equal partner, a non-state entity? Or would connecting lines between the dots which are ready to be connected bring into play a move away from the conventional accountability relationship of state executive authority towards elected representatives of citizens?

In his publication in July 2009, the Canadian scholar Benjamin Perrin takes the argument in favour of this more inclusive view one step further: “Non-state actors that are supportive of a government’s foreign policy agenda are a decentralized asset in advancing the state’s objectives with other states, international organizations and non-state actors. This so-called “track two diplomacy” exponentially expands the number of channels by which a state can advance its objectives. Non-state actors can be, and often are, more effective at program delivery and development field work than governments acting alone. Building coalitions of states and non-state actors to support its foreign policy interests would enable middle-powers like Canada to achieve much more than they could otherwise. Such systematic coordination appears to be wholly lacking at present with respect to major foreign policy objectives. While it is a long-term investment to identify, enlist and support non-state actors that are receptive or friendly to a given foreign policy agenda, the dividends can be significant both in terms of rallying public support and ensuring effective implementation” (in “Canada’s Journal of Ideas” 28 July 2009, *The Threat and Opportunity of Non-State Actors to a Conservative Foreign Policy; for a similar reasoning more directed towards a reform of ministries of Foreign affairs and diplomacy, see “Guerilla diplomacy” by Daryl Copeland, 2009 Lynne Rienner Publ. Inc.*).

Stepping back from the security focus and looking again at the wider global governance system, one can find a counter-point to a state-dominated worldview in the concept of **Non-polarity** as inspired by information technology-induced ‘networking’, which was formulated by Richard Haass, President of the Council on Foreign relations (2008, Foreign Affairs) and the former head of the US State department policy planning staff (2002). Similar concepts are expressed by Professor Aart Jan Scholte in his textbook “Globalization - a Critical Introduction” (2005, Warwick University). Such concepts are supported and justified by a less state-centric analysis of the international (security) arena. The United States is adapting itself to such an emerging world of ‘non-polarity’. This is evident from pronouncements by policy advisers to the current American President Obama.

Although many states still continue to proceed from and plan for a further state-dominated global arena, the non-polarity aspect appears to play a role for them too. It depends, however, on their specific capacities and in particular on the degree of penetration by information technology-induced forms of public affairs and private business. For the reform management of current international financial and economic relations after crises that began in 2008, the less than all-powerful state supervisors solicit financial and economic operators 'to do their part', albeit under a still to be devised degree of supervision. As emerging powers come to the fore both economically and politically, such as Brazil, Russia, India and China, they seem to rehabilitate the state as a prime mover even when acting through state enterprises or Sovereign Wealth Funds. It remains to be seen if such perceptions will not mask a deeper non-state reality even in those new (old) powers. Even when accepting that states still occupy a central role in global and certainly security affairs, albeit within a changing context, some attention and interest would not be amiss in deepening the understanding of interaction between states and non-state stakeholders in the security field.

This paper focuses on the role of NSSS as co-providers of security, a role which they fulfil alongside and in conjunction with traditional state-level agents. Further research options and possible lines of action, at state and non-state levels, are presented as the conclusion (VII) to this paper. A deeper awareness of the real-life provision of security, which includes stakeholders beyond the state, may help the state which cannot do this all alone.

An analysis of these security actors beyond the state can offer new opportunities to states for enhancing security and fulfilling (accounting for) their responsibilities towards their citizens. At the same time, such an insight may help citizens and Non-State Security Stakeholders to make the most of these opportunities and to operate an unwritten 'stakeholders' covenant' concerning security as a public-private good.

The main questions which will be discussed hereafter are:

- What role do non-state stakeholders (NSSS) have in multilateral decision-making for security, and
- How do they contribute to implementing the rules which are laid down for security in the international community?
- What do the different four security regimes (NPT, BTWC, CWC and UNSC 1540) tell us about the way NSSS are performing and about the possible further evolution of their role in conjunction with the state?

What role do non-state 'security stakeholders' see for themselves?

To start with, the arms control and disarmament regimes at the global level are a useful point of entry. Such an examination at a regional 'governance' level as opposed to a global one (for example, the level of the European Union or of Latin American fora) could also offer interesting cases, but this is left for another day. The selection of four global security regimes in this paper solely has the purpose of illustrating an argumentation. It does not intend to demonstrate conclusively that a role for NSSS would in all cases exist in all disarmament and security regimes. These regimes are the way that states have attempted to regulate or ban the development, production, trade or use of potentially lethal equipment or substances to be used in conflict, because they have decided that their interests are thus best served. Some international security regimes are more likely to allow more 'contributing space' to Non-State Security Stakeholders than other regimes. The arena of the Nuclear Non-Proliferation Treaty compares less favourably with the room given to NSSS by the CWC, the BTWC or the Landmine Convention and the Convention on Cluster Munitions of 2008.

The processes of negotiating and the subsequent implementation of the Biological and Toxin Weapons Convention (BTWC, 1972), the Chemical Weapons Convention (CWC, 1997), the Landmine Convention (2006) and the Convention on Cluster Munitions (2008) already illustrate that NSSS, including NGOs, industry and issue-oriented network coalitions play a contributing role in constructing these forms of security 'governance'. The NSSS in play may even be said to have become part of security regimes that they continue to help implement.

The case for a role for industry or for private laboratories is a particular one in relation to the state or to the public domain. These firms are generally private 'market place' actors. As such, they are subject to a territorial state's jurisdiction. They are indirectly involved -through the state subscribing- in international control regimes in the field of security. As a rule, government will subscribe on behalf of the state as a whole -covering all private actors- to an

international regulation in the field of security. But private corporations may also engage in voluntary codes of conduct, such as Responsible Care (www.responsiblecare.com), that refer to international agreements as a wider framework within which such codes operate.

State-level commitments and corresponding legal obligations are generally expected to be translated into domestic and enforceable regulations in order to become enforceable. These regulations intend to condition-by prohibiting or licensing- the practice of private actors under its jurisdiction. Such actors may or may not already have subscribed to a “code of conduct” among them. In carrying out their business, they are likely to cross state borders as companies function, more often than not, in an international marketplace, or will be indirectly involved in a chain of transactions and have to know their customer.

Non-state actors are often considered by state authorities to be at least ‘detractors’ from, if not outright actual or potential risks to security as maintained or promoted by the state. This is because their ‘raison d’être’ is a non-state private objective, be it of a profit-making or non-profit-making character. But are such private actors not in fact called upon to help integrate and legitimize both rule-setting and implementing practices that the state uses when providing for security? Do such non-state security stakeholders themselves not have a role in implementing and reinforcing the effectiveness of security regimes? Can lessons therefore be learnt for involving such additional actors in a more systematic way?

Such an analysis can be undertaken either starting from a governmental perspective, or proceeding from a Non-State Security Stakeholder viewpoint. For the international security regimes examined here, for combating terrorism and enforcing export control on items whose trade is regulated among states to prevent proliferation or other forms of undermining security arrangements, there are limits, however, to what can be expected from NSSS.

These actors can help and sometimes be of vital importance in certain areas: for developing external and internal policies by state institutions, for co-opting such actors elsewhere into discrete or public campaigns to pressure unwilling governments, for an impetus to better implementation and for monitoring the effectiveness of regulatory and verification regimes. Last but not least, they are partners in building legitimacy. So, in brief, non-state security stakeholders are vital for a sustainable level of governing (international) security. Therefore, in the author’s view, NSSS may be considered as partners for the state and co-providers of security, albeit under certain circumstances and in addition to and complementing action by the organs of the state.

From the point of view of state-level agents, it could be worthwhile to explore the following routes:

- Do national foreign and domestic policies consciously include the actors beyond the state (NSSS), as enablers for a more effective and more sustainable government action in the field of international security?
- If not, what 'easy gains' can be identified, for example, by selecting some risks or issues for applying such an approach?
- What further operational research would be useful and necessary to marshal more evidence to act upon this insight?
- How can a maximum of free space i.e. a less bureaucratically cumbersome environment, be earned by non-state security stakeholders.
- Can they maximize this space by encouraging a positive and proactive attitude by the state in response to a security contribution by an NSSS?

What role do others see: pressure groups, lobbying?

Research literature identifies four key governance failures:

- the loss of governmental control,
- the politicization of non-state actors,
- the lack of transparency and accountability among private actors, and
- insufficient coordination between public and private agents.

One consequence of such governance failure is a damaging perception that the state is not in complete control, but remains formally the actor that is held politically responsibly. An overdose of non-state influence in security may be the case when non-state actor stakeholders, who have been perceived as neutral until that point in time, become politicized by a growing involvement in public security.

In making the distinction between government and governance the researcher Elke Krahmann from Bristol University makes the following observations: “while under ‘government’ political responsibility rests with the legislative and executive, in ‘governance’ it is distributed among a multiplicity of state and non-state actors” [...] “while governmental and intergovernmental institutions primarily rely on formal channels of communication, private security actors frequently use personal and informal networks to coordinate their operations”. And she concludes: “that formal and informal guidelines should be established that ensure sufficient consultations of and communication among all relevant public and private actors involved in security governance at the local, national, regional, and global levels”. (Elke Krahmann, editing a series of case studies in 2005, “New Threats and New Actors in International Security”, pp. 203-210).

State-level actors are generally reticent and at least ambiguous towards any role for non-state stakeholders in security. But here a distinction between the case of conventional weapon regimes and the chemical and biological weapon regimes is in order, as roles of NSSS do differ from one forum to another.

Besides the CWC and the BTWC, the 2006 Ottawa Landmine Convention and the Cluster Munitions ban at the end of 2008 both illustrate that non-state stakeholders from industry and issue-oriented network coalitions play a role also in a further respect: helping to implement such arms control and disarmament regimes. Today, items on the international agenda are increasingly being set and moved forward by civil society groups such as coalitions of NGOs and other non-state stakeholders, sometimes against individual state interests formulated for the short term.

The fact that civil society groups are central in promoting progress and achieving results in international relations seems to be absent from most of the political-level reasoning. This may stem from the state-centric terms in which government continues to formulate and communicate foreign policy objectives. A recent evaluation of ten years of Dutch policies in de-mining activities, published in 2009 by the Evaluation Unit (IOB) of the Netherlands Ministry of Foreign Affairs, notes that civil society groups do make a difference in multilateral decision-making (recommended reading).

One may also note that the pressure by non-governmental actors has clearly contributed to the European Union Code of Conduct on Arms Exports (see the chapter by Anders in Elke Krahmann editor - recommended reading).

The awarding of the 1997 Nobel Peace Prize to the International Coalition to Ban Landmines (ICBL) illustrated the wide recognition of the fact that the NGO ICBL provided an invaluable contribution to the Ottawa process and the negotiation of the Landmine Convention. The ICBL has been the driving force in its effective implementation. The same is true for the role the ICBL played in the establishment of a convention on cluster munitions. It is evident that the international landmine coalition has had, and still has, a great influence on state actors taking positions on landmines and explosive remnants of war. These cases show that foreign policy makers take into account the role that such groups and coalitions play. With the emergence of civil society groups also on the international stage, foreign policymakers advance foreign policy objectives along a wider spectrum of channels. Time is spent on identifying, enlisting and supporting those non-state stakeholders that are receptive to a state's foreign policy agenda. Thus its foreign policy actions become (more) effective.

Can non-state stakeholders do more than lobbying and bringing pressures to bear, promoting their view of how matters should be organized, regulated and verified? Can they, for example, also act as a 'default' servicing arrangement for a convention when this convention does not (yet) have an operating agency? Some of the security arena conventions have a full service arrangement for ensuring implementation. This is the case with the OPCW (and the Technical Secretariat) for the CWC; the NPT conferences are serviced by UNODA on a conference-by-conference basis (and not by the separate IAEA dealing with nuclear cooperation). The BTWC only has a very embryonic arrangement to

cope with support for implementation and has no standing secretariat but an Implementation Support Unit comprised of three (!) staff members from UNODA, as decided by the States Parties to this convention. This aspect will be addressed hereafter.

Four security regime roles for NSSS: NPT, BTWC, CWC, UNSCR 1540

These four different regimes will be examined as to their specific NSSS scope.

The role of Non-State Security Stakeholders for NPT (1968-1995)

In 2008 Claudia Kissling of Bremen University in her “Civil society and nuclear non-proliferation” examined the impact of non-governmental views on a preparatory session held in 2005 to prepare the formal Review of the Nuclear Non-Proliferation Treaty, renewed in 1995, in 2010. Her conclusions are sobering. She notes, citing Carroll, “numerous fora provide a much greater degree of access and possibilities for NGO influence than is usual in the field of disarmament. Inclusion of stakeholders’ views in NPT proceedings does seem to be very minimal, and does not lead to states’ delegations responsiveness to NGO views.” Citing a Canadian working paper from the NPT session 2005, she writes ‘there is an aversion on the part of governments to public scrutiny, in other cases, there is concern that already complex and difficult negotiations will only become more so with the introduction of a whole new set of actors’(175). Her conclusion is negative towards the hypothesis of a civil society’s contribution to the evolution of regimes (even) in the security field. She writes “but civil society can contribute to the evolution of a regime if it replaces deliberative input by classical lobbying wherever it has to act within a participation – and deliberation – unfriendly setting”(Kissling 176).

From the case of the successful civil society push for a landmine convention by the International Coalition she concludes that the further involvement of other types of NGOs (human rights, development, humanitarian) in arms control and disarmament processes would shift the ways in which issues are defined (Atwood 2002/1 Disarmament forum,11,13 cited by Kissling 177). One may add that reframing such an issue then increases the power and scope of constituencies that support the successful negotiation of such instruments.

Preparatory work for the NPT Review Conference in May 2010 also includes a number of non-state-level contributions. A recent -2009- review of the literature on nuclear issues for the International Commission on Nuclear Non-Proliferation and Disarmament, in its section on Engaging the Nuclear Industry, states the following: “ (6.23). [...] there appears to be a clear need to involve the international nuclear industry more closely in various aspects of the nuclear debate. This would not just be for the purpose of assessing what the possibilities and challenges facing the nuclear energy sector truly are. In increasing the interchange of ideas and information between governments and industry about issues such as the primordial need to secure nuclear materials and wider concerns about proliferation and nuclear terrorism, a more positive international environment is likely to result. And if proposals along the lines of those being considered by GNEP (Global nuclear energy partnership) eventually come to fruition, the close cooperation of the nuclear industry will be essential. 6.24. It has to be said that there is little in the literature on industry involvement in the nuclear debate apart from the context of discussion in the Nuclear Suppliers Group. One suggestion has been for a government/industry conference in the lead-up to the 2010 NPT RevCon.” (Martine Letts, “Commission should promote a second nuclear age”, *The Australian*, 24 September 2008.) There have also been suggestions for an industry code of conduct, ranging from responsible uranium supply to support for the development of proliferation-resistant fuel-cycle technologies. (Ken Berry, Research Coordinator ICNND 2009).

In examining the nuclear industry, the researchers Gretchen Hund and Amy Seward from the Pacific North West Center for Global Security wrote in 2008: “Non proliferation is the overarching driver that industry needs to consider in adopting and implementing a self-regulation approach. A few foreign companies have begun such an approach to date; it is believed that, ultimately, broad engagement of global industry leaders in self regulation is needed to result in the greatest non proliferation benefit. More interviews with nuclear industry representatives, outreach to radioactive source industry representatives, and further research are needed **to determine whether enough industry players are willing to adopt self regulation to make it an effective contributor to non-proliferation**” (emphasis added) and they concluded “that industry can be an important first line of defense in detecting and thwarting proliferation, such as an illicit trade network or an insider theft case, by complementing and strengthening existing governmental efforts. This potential contribution appears to differ for each industry and pillar. For example, the dual-use industry can play a critical role by providing export, import, or security-control information that would allow a government or the IAEA to integrate this information with safeguards, export, import, and physical protection information it has to create a more complete picture of the potential for proliferation. Because industry is closest to users of the goods and technology that could be illicitly diverted throughout the supply chain, industry information can potentially be more timely and accurate than other sources of

information. Industry is in an ideal position to help ensure that such illicit activities are detected. This role could be performed more effectively if companies worked together within a particular industry to promote non proliferation by implementing an industry-wide governance/self-regulation program. Performance measures would be used to ensure their materials and technologies are secure throughout the supply chain and that customers are legitimately using and/or maintaining oversight of these items. This approach is broader than internal compliance programs (ICPs) implemented by individual companies within an industry. **While an ICP focuses narrowly on a system a particular company has developed to ensure and promote compliance with existing regulations, industry governance/self regulation contains ICPs in a broader form in that it includes industry-wide approaches for contributing to non proliferation.”** (emphasis added).

The authors concluded that industry support for international safeguards’ objectives should be added to the agenda given the role that the nuclear industry plays and the dual-use industry could play in providing information to the IAEA in evaluating the completeness of state declarations. (*Pacific North West Center for Global Security* “Broadening Industry Governance to Include Non proliferation”, November 11, 2008).

In 2009 the researchers Martine Letts and Fiona Cunningham have suggested exploring the possibility of a nuclear industry Code of Conduct. Their study interestingly draws upon BTWC and CWC experience with industrial engagement to inspire a contribution to the reviews of the NPT (International Commission on Nuclear Non-Proliferation and Disarmament):

”Much of the world’s nuclear industry is multinational, with significant public/private cross-ownership where commercial interests, nonproliferation interests and national strategic interests can overlap or collide. Yet governments have tended to manage proliferation as a political issue with virtually no industry involvement other than an expectation that it comply with directives which themselves can be difficult to follow or implement. Industry surveys in the US have shown that industry assesses its own performance in meeting export controls requirements as less than perfect.” (Richard T. Cupitt. *Survey on U.S. industry compliance and export controls: executive summary*. University of Georgia, Center for International Trade & Security, 2000: http://www.uga.edu/cits/documents/html/us_industry_compliance.htm).

“At the same time, some governments and states have found it convenient to ignore or tolerate proliferation where it suited their strategic or security positions. Governments rarely include industry representatives in proliferation information exchanges or policy discussions in groups such as the Nuclear Suppliers Group (NSG) except through the occasional outreach activity. Yet industry is at the front line of the development and spread of dual-use nuclear technology and has the capacity to prevent, limit or place conditions upon the

spread of that technology, as well as report it, and to influence the type of nuclear technology that is developed in the future.

Industry should be an active partner with Governments in the drafting of regulations and treaties that affect their activities, to ensure that they create a level playing field for all industry players and make operational sense to encourage compliance. However optimistic the outlook is for the future of nuclear energy (and the global financial crisis may slow things in the short to medium term), the fact remains that in the eyes of the public, it remains a high-risk industry where a major incident can have disastrous consequences. Governments also consider that the rise in nuclear power worldwide does increase the risk of proliferation, even if they understand that value of nuclear energy as a provider of energy with a low carbon footprint. An aggressive growth program risks accentuating those fears. We know that in many parts of the world, the public remains opposed to the introduction of nuclear energy, even if attitudes are starting to shift.”

And Letts and Cunningham continue: “*Towards a government-industry conference against nuclear proliferation*: The global, integrated nature of the nuclear business, its very close connection to government and a changing nuclear policy landscape, including the renewed push towards progress in nuclear disarmament, argue strongly in favour of more regular government-industry collaboration, including through joint monitoring, reporting, and enforcement of the rules and export controls. A jointly negotiated declaration as to how that would be done would add a new dimension to the global nuclear conversation.”...“New, groundbreaking announcements are also possible, given that supplier governments have under active consideration the development of new rules of the game which may have real impact on the development of the industry. These include proposals to multilateralise the nuclear fuel cycle; to limit the spread of sensitive nuclear technologies; to change NSG rules to insist that countries not exercise the right to develop sensitive technology as a condition of supply, as well as making the adoption of the Additional Protocol a mandatory condition of supply. This might be overly ambitious, given how tightly commercial interests are woven into national interests, especially when it comes to the right to develop sensitive nuclear technologies such as enrichment. It must be remembered that the controversial ‘two-tier’ system enshrined in the NPT between nuclear weapon states and non-nuclear weapon states could also spill over into the peaceful uses domain. Initiatives to limit the possession and use of sensitive nuclear technologies to those who already have them now-albeit for good non proliferation reasons-is opposed by emerging nuclear industry powers who will not accept the perpetuation of a two-tier system in the nuclear power industry. There is also virtually no chance states will even consider foregoing the right to develop sensitive aspects of the nuclear fuel cycle, or see them centralised or regionalised under multinational control, in the absence of a solid commitment from the nuclear armed states to achieving a world without nuclear weapons. In this context, a global call for disarmament might also become the business of industry. It may be worth exploring whether industry is

prepared to make a public commitment to the goals of both disarmament and non proliferation as a sign of good faith, in the interests of the future bona fides of the business and as a contribution to dismantling the two-tier system. Being politically more proactive does not mean that industry has to abandon its evidence-based approach to risk. The international community will need to be confident that growth in nuclear energy will be managed responsibly. Being proactive can help industry in its ambition to ‘strengthen and sustain public confidence, both in the reliability of nuclear technology and in the people and institutions responsible for its use.’”

Another angle –that of internal industry standards, applied by industry itself– was taken up by Ian Anthony in the 2006 SIPRI yearbook: “[..] The role of business and the private sector in securing sensitive civil items. The previous sections underline that the need to combat mass-impact terrorism is creating new sets of security regulations that apply directly to business. Business can readily share the objective of preventing mass-impact terrorism. Apart from protecting themselves from direct attack, the business community should recognize three other compelling reasons to put in place effective security systems. First, businesses have a legal duty to comply with the law and face the risk of punishment if they do not. Second, they have a moral obligation to their employees and to the societies that support their activities not to contribute to activities that undermine security. Third, they have a self-interest that stems from the potentially devastating economic consequences for their companies if they are connected in the public mind with mass-impact terrorism. Industry recognizes the need for regulation—on the condition that rules are clearly drafted, well publicized, do not disrupt day-to-day business practice, include checks on enforcement, and provided that punishments for non-compliance ‘fit the crime’[..]” .

However, official IAEA recognition of non-state security roles appears to be limited, as is shown in the following excerpt from “20/20 *Vision for the Future*” *Background Report by the Director General of IAEA for the Commission of Eminent Persons, February 2008*: “The IAEA’s role and position in the multilateral system is well established. In certain areas, the IAEA will play a central or a leading role, for example in non-proliferation efforts and in the implementation of international conventions on safety and security. **In other areas, it has a more supportive role, working in partnership with other inter-governmental bodies, NGOs and industry groups, such as the OECD/NEA, WANO and WNA, as well as academic institutions and professional societies.**” (emphasis added).

The Biological and Toxin Weapons Convention (1972)

For many, “security” is rather an abstract concept. The daily point of departure for most citizens is safety rather than security, which is left to the public

authorities to provide. The concept of safety from an unknown manipulation of organisms is one of the hidden motives for the revulsion felt for anything biologically not natural, but man-made. In the decades after the Biological and Toxin Weapons Convention came into force in 1972, progress in bio-engineering has led researchers into arms control and governance to a link up Safety and Governance. Bio safety – understood to include measures, policies and procedures to minimize and eliminate potential environmental and human health risks resulting from biotechnology and its products in particular Genetically Modified Organisms – was set to become a matter for global governance. Efforts at bio safety rule-making show a divide in the values and expectations of major stakeholders regarding transgenic products. GMO exporting countries, both developed and developing, backed by a powerful and growing biotech industry, confront potential GMO importing countries. This division proves sensitive and responsive to strong public and consumer opinion against genetically-engineered products. Rule-making has emerged in numerous institutions. The WTO and the Cartagena Biosafety Protocol (2003), which intends to protect biological diversity from the potential risks posed by living modified organisms resulting from modern biotechnology, emerged as the axis of global bio safety governance. Both seek to create international standards that are implemented through binding trade measures. They also largely overlap in their membership – there are 141 parties to the Protocol and 150 to the WTO (as of June 2007).

“The WTO is about market access [...] from the exporter perspective, aiming to ensure that products are treated in a non-discriminatory manner, save some particular exceptions. The Protocol anchors in precaution and, through the advance informed agreement (AIA) procedure, enable importers to put in place and operate risk assessment and management procedures that seek to minimize GMO risks.” (Oran R. Young, W. Bradnee Chambers, Joy A. Kim and Claudia ten Have, *Institutional interplay: Biosafety and trade*; 2008).

In 2007, the States Parties to the BTWC resolved the following: “21. Recognizing the importance of developing a coordinated and harmonized domestic mechanism to implement the obligations of the Convention, the States Parties agreed on the value of moving from adjacency to synergy, with their governments taking the lead by promoting cooperation and coordination among domestic agencies; of clearly defining the roles and responsibilities of each; and of raising awareness of the Convention among all relevant stakeholders, including policy makers, the scientific community, industry, academia, media and the public in general, and improving dialogue and communication among them. The States Parties noted that, where appropriate, the establishment of a central body or lead organization and the creation of a national implementation plan may be useful in this regard. 22. The States Parties agreed on the value of ensuring effective enforcement of their legislative and regulatory measures, including through building capacity to collect evidence, to develop early-warning systems, to coordinate between relevant

agencies, to train law enforcement personnel, and to provide enforcement agencies with the necessary scientific and technological support.”

In the absence of a Verification Protocol and a secretariat or other support mechanism for the BTWC, the role played by a non-state (public) service, the London (and The Hague-based) Verification Research and Training Centre for the Biological and Toxin Weapons Convention provides an interesting - interim - answer. Contrary to the CWC and a few other disarmament and arms control regimes like the Complete Test Ban Treaty, the BTWC does not have an agency of its own; it depends upon states parties for a collective and mostly national supervision of activities banned and governed by this convention. While a blueprint for an implementing verification organization had been drafted, it was not enacted for political reasons, stemming from doubts in some States that the tens of thousands of laboratories in this field could ever be effectively inspected under a regime comparable to the OPCW which operates for only a few hundred chemical industry plants worldwide. This meant that BTWC could not even offer any outreach for helping to build the capacity to implement, which is a precondition for national verification. Into the void for supporting outreach that can help states to implement has stepped the non-governmental Verification Research Training and Information Centre. It has been funded on a project basis and taken on a role which is beyond the regular role that non-governmental actors play with regard to a convention: it has become part of the implementing process. As the small official Implementation Support Unit in Geneva with three staff members who are part of the UN Office of Disarmament Affairs cannot adequately provide support and technical assistance for outreach to the states parties, VERTIC has played that role to some degree. With a supporting budget from some states like the UK and the Netherlands, BWTC is thus helped by VERTIC to function. Annually, the states parties send experts to a meeting in Geneva to compare the best practices in ensuring that the convention is nationally implemented and that the risks are followed up.

A comment by Malcolm Dando on 14 July 2009 published in the Bulletin of the Atomic Scientists is reproduced to illustrate this: “Since 2003 BWC annual meetings at both the expert and diplomatic levels have been held to "discuss and promote common understanding and effective action" on the topics that can most effectively strengthen the convention. For instance, in 2007, participants took up how to "enhance national implementation, including enforcement of national legislation, strengthening of national institutions and coordination among national law enforcement institutions." These annual meetings have not only involved diplomats but also have been imaginatively expanded by successive chairmen to incorporate more of the relevant stakeholders--particularly members of national and international scientific communities.” (<http://www.thebulletin.org/web-edition/columnists/malcolmdando/biodevelopment-and-the-biological-weapons-convention>).

A number of questions inevitably arise in such a situation when a non-governmental organization is - even informally - tasked with such responsibilities. For example, how does one view its (NSSS') accountability to the wider treaty community? How can clarity as to the relationship between VERTIC and other actors in this and related fields be guaranteed?

However, the record to date and the support given by VERTIC in conjunction with several key states supporting the BWTC in practice and the full reporting that these and VERTIC provide have made this 'symbiotic' relationship valuable. The states benefiting from technical assistance services attest to this. If, and when, a proper inter-governmentally agreed verification mechanism for the BTWC would ever be established, VERTIC's and the Implementation Support Unit from UNODA's experience should certainly be built upon (see: www.vertic.org).

The Convention on Chemical Weapons (1993 - in force 29 April 1997)

The long process of banning chemical weapons in the 20th century took almost 80 years parallel to the persistent use of these toxic substances in war up until the 1980s (Iraq-Iran) and this illustrates the involvement of industry in developing a workable security regime. Chemical weapons had first been used in April 1915 at Ypres, Belgium in a German attempt to break through the Allied frontline. Their continued use in war acted as an incentive to international attempts at the League of Nations in the 1920s and 1930s to ban these weapons. These were unsuccessful but continued at the United Nations Commission/Conference on Disarmament, finally succeeding in 1993. At that time the 44-year Cold War, which had seen massive stockpiling of chemical weapons but not their use, finally came to an end. The role played by the *organised chemical industry* during negotiations for the Chemical Weapons Convention up to 1993 and subsequently in connection with its two Review Conferences in 2003 and 2008 merits some further comments. Industry continues to interact with the OPCW and offers a prime example of NSSS in action (see: Kenyon/Feakes (eds.) "The Creation of the Organisation for the Prohibition of Chemical Weapons", 2007).

The European Chemical Industry Council (CEFIC) and the International Council of Chemical Associations (ICCA) have produced various position papers since the creation of the OPCW in 1997. Also on the occasion of the tenth anniversary of the Convention in 2007 CEFIC put across the interests of the chemical industry. A comprehensive CEFIC policy statement was prepared for the CWC's Second Review Conference in April 2008, covering CWC-related issues such as responsible care, globalization, the interrelationship between process safety, performance audits and security, and the importance of business confidentiality and more effective enforcement (see recommended reading). As industry had helped put together the original architecture of the

CWC in the early 1990s, it remained engaged in that process. The underlying principle for its European association CEFIC regarding the non-proliferation aspect of the CWC is that no commercial chemical facility was *as such* to be considered to be riskier than other commercial sites dealing with chemistry: all it takes to convert any facility for illicit purposes is determination, know-how and resources.

The provisions of the convention are, under Article VII, to be implemented by every state party to the convention by necessary national legislative and administrative measures. This mandates an annual declaration of chemical activities regulated by the convention. Verification under Article VI of the CWC is considered by the chemical industry to be a *confidence-building* measure and not as having as its purpose to enforce compliance with the Convention.

It is expected by CEFIC that illicit chemical production will only take place in facilities that are not declared by states as chemical facilities under the convention. State-level representatives which are responsible as the National Authorities for the observance of the CWC, do not always take that same view, however. It cannot be excluded that illegal chemical activity will take place at an *otherwise* declared industrial site.

Within the OPCW context an informal ‘watchdog’ role over its industrial and commercial interests is played by a worldwide -largely privately organized- chemical sector. This industrial sector, which is vital to all economic development, is subject to many regulations flowing from international agreements, such as the CWC among many others, and from domestic legislation. It is interesting to note that the global spread of the chemical industry since the Convention came into force in 1997 has led the Indian Chemical Council to increase, as of 2007, its industry members’ participation in the outreach programmes of the Organisation for the Prohibition of Chemical Weapons. China sees the OPCW inspections of the chemical industry as complementing its national inspection regime for chemical plants.

One could well say that without the chemical industry’s active support in 1993-1997, in particular by the American Chemical Council, the United States Congress would not have authorized the ratification of this convention. It provides for intrusive industry inspections in industry, far beyond what other treaties mandate. In the early 1990s the ACC was preoccupied with its tarnished reputation in the public eye. The war between Iraq and Iran in the 1980s had led to allegations that certain companies had supplied so-called dual-use chemicals that were to be intended for the production of chemical weapons, in some cases in apparent violation of existing export control regulations. The ACC then led the way for the United States to ratify the CWC by propagating that joining and implementing the Convention was a good thing.

The European counterpart to the ACC, the CEFIC, considers that the extent of the existing rules and measures at the European and national level to safeguard the security of chemicals in terms of distribution, plant security and transport is sufficient to combat any possible chemical terrorism. It finds little scope for additional European rules. But the CEFIC also holds the view that if there would be a serious security gap in the regulatory framework, then it will support pragmatic, proportionate and sustainable changes to the regulations. This for all practical purposes signifies a clear ‘stakeholder’ approach. Neil Harvey, a senior official from CEFIC in Brussels, writes “that all national, EU and international security and control regulations ought to be checked to identify what gaps if any exist. Then specific issues can be addressed, such as inconsistent industry and member state compliance and the potential for international regulatory convergence. Until then, it seems premature to second-guess what further controls should be included in the Chemical Biological Radiological and Nuclear review process, when the nature of the security threat has not been specified”.

Harvey writes: “Readers of Chemical Disarmament are familiar with terms like “non-proliferation”, “non-declared facilities”, “OCPFs” and “DOCs” but perhaps less familiar with “chemicals management”, “Responsible Care” and “fine chemicals”. Delegates of States Parties at the Conference use military and diplomatic language while industry representatives use chemical, technical and commercial terminology. This communication gap is not serious, but neither is it conducive to building harmonious relationships.”

A related observation by Harvey has been that state-level delegates within the OPCW use different benchmarks –different to those in industry - to measure ‘success’ in achieving non-proliferation objectives.... “As an industry we work on chemicals management issues **with regulators across the world** (emphasis added) and perhaps the OPCW could do likewise. The ICCA is an active partner in the UNEP Strategic Approach to International Chemicals Management (SAICM), which has resonance with the CWC. It seeks to help countries introduce measures to prevent illegal international trafficking in toxic, hazardous, banned and severely restricted chemicals and to strengthen the capacity of developing countries to prevent and control illegal international traffic of chemicals. Regulators across the globe are increasingly using better risk management techniques to implement legislation. There are trade controls on chemicals that have dual use, that are drug precursors, and that are persistent organic pollutants. It would be inappropriate if all trade controls on chemicals were the same, but more harmonization and regulatory convergence would be welcomed by the chemical industry. We have nothing to hide from regulators and welcome initiatives that will foster transparency with National Authorities (author’s addition: that are applying the Convention). However, making regulation increasingly complex makes compliance more difficult for industry. Wider rather than deeper regulatory control, in concert with the destruction of all existing chemical weapon stocks, is the best way to ensure permanent chemical disarmament.”

These views – regardless of how much they are presented in the interest of industry – demonstrate the chemical industry’s strong ‘stakeholder’ attitude amounting to a commitment to continue contributing to security (see recommended reading).

The Organization for the Prohibition of Chemical Weapons, the operative arm of the CWC, shows that achieving a working convention to ban all chemical weapons in 1993 was indeed possible with all major players on board. Except for key Middle Eastern states locked in the Arab-Israeli conflict, which decided not to become members of the OPCW, and with its latest member Iraq, 186 states have now joined this convention (2009). This is a remarkable achievement as the CWC carries unprecedented and very intrusive transparency measures into the very heart of chemical industry worldwide. It operates through a) an annual declaration by states, to the OPCW, on chemical activities at site level. It also b) backs up this by verification through international inspections that are escorted nationally.

(See: www.opcw.org and in particular the Industry and Protection forum held in November 2007 and the Report of the Second Review Conference held in April 2008).

The OPCW in operating the Chemical Weapons Convention in fact applies its regime to a set of actors which differ from its member states. In fact, these states are obliged by their signature and ratification of the convention to establish National Authorities that translate the convention into national legislation and adopt enforcing measures. These so-called “NAs”, which are often situated within a ministry in charge of industry or defence, sometimes of health or the environment, annually declare to the Secretariat of the OPCW all convention-related chemical activities and certain anticipated ones on the territory of or otherwise under the member state’s jurisdiction. In the Netherlands, the Ministry of Economic Affairs, as the designated National Authority under the Convention, asks all companies involved in the production of and trade in chemicals to declare the relevant data and submits an integrated declaration to the Technical Secretariat of the OPCW.

This declaration is based on what the chemical industry notifies to the National Authorities as it is obliged to do under national legislation, as mandated by the convention. These National Authorities also arrange and escort the mandatory OPCW inspections that randomly visit selected chemical plants to verify declarations. The management of these plants thus cooperates and facilitates the OPCW inspectors’ mission. These professional international inspectors verify whether the declared activities correspond to reality, *as witnessed on site by the inspectors*. The main players on the ground, which have the responsibility for implementing the convention alongside to national authorities, are thus the *chemical factories and companies* that develop, use and produce chemicals and firms that trade in chemicals. These activities can only legitimately take place,

according to the CWC, for peaceful purposes; all otherwise intended activity is prohibited by the convention.

Some illustrations of the role of the non-state stakeholder in this regime can be read in the CWC's Second Review Conference Report of April 2008. In paragraph 20 of its Report, the Second Review Conference "underlined the obligations of all the States Parties to adopt in accordance with their constitutional processes the necessary measures to implement their obligations under the Convention, including the obligation to prohibit natural and legal persons within their territory and in any other place within their jurisdiction, from undertaking any activity prohibited to a State Party under the Convention". And paragraph 53 states (...) "the obligation of the States Parties to adopt the necessary measures, including legislative and administrative steps, to ensure that toxic chemicals and their precursors are developed, produced, otherwise acquired, retained, transferred, or used within their territories or in any other places under their jurisdiction or control only for purposes not prohibited by the Convention."

For the prescribed ban to be effective, the interlocking nature of all provisions of the Convention is a key characteristic. This, by its very nature, builds mutual trust, including among the chemical industry's firms that are located in the member states that are keen to maintain or create conditions that amount to a 'level playing field' in the global marketplace. Confidence in each State fulfilling its obligations creates confidence in the fulfilment of all of the convention's obligations by any other State Party. This **chain of confidence** thus enhances mutual trust. Interaction by state-level agents like customs authorities and national inspectorates, on the one hand, and different stakeholders from industry at the national level, on the other, helps in implementing the Convention as whole.

The OPCW has in its first 11 years had a sometimes uneven relationship with the organized chemical industry and the scientific community. After an initial close working relationship at the start-up phase of the convention's operating agency OPCW at The Hague in the Netherlands, from 1994-1997, a pause had set in, until the First Review Conference in April 2003. After April 2003, until the CWC's Tenth anniversary was celebrated in 2007, a second pause set in.

While the scientific community around OPCW continued to interact including by the operation of the Scientific Advisory Board to the Director General, and various academic networks involving former and future OPCW officials, the European chemical industry was during these years up till 2008 very much involved with the European Union's REACH Directive. REACH now governs most chemical activities in the EU and chemical trade with the Union's member states from abroad. In September and November 2007, some events to celebrate the CWC's first ten years were held on the margins of the OPCW. An

Academic forum and an Industry and Protection forum were held with the explicit goal of engaging non-state stakeholders.

Again, at the Second Review Conference in 2008, the open-ended working group that had prepared the conference invited industry associations and expert researchers to give their views on the operation of the convention. On 9 April 2008, an open forum was held during the Second Review Conference for that purpose. The papers contributed were made available to all delegates representing the member states at the OPCW for the Second Review Conference.

Stakeholder involvement in the operation of the Convention for the Prohibition of Chemical Weapons and the work of the OPCW helps to make stakeholders and the wider public more aware of its benefits and requirements. As advocated by the International Union of Pure and Applied Chemistry (www.iupac.org), the adoption of appropriate codes of conduct by scientists and technological communities can also help prevent the use of toxic chemicals for prohibited purposes. This improves the conditions for the peaceful use of chemistry, which is another objective of the CWC and is important to those member states that have as yet little or no chemical industry as such (CWC Article XI).

The actual practice at the OPCW shows a need to exchange views with both the chemical industry and the scientific community more systematically in order to promote the object and the purpose of the Convention. This is required so as to keep pace with scientific and technological developments pertaining to the operation of the Convention. Possible exchanges between National Authorities, the private industrial sector, and non-governmental and scientific actors at events organized during Tenth anniversary of the Convention's entry into force continue to inspire this interaction. This in turn contributes to a wider and engaged environment for the Convention's operation. In the light of scientific and technological developments in the chemical industry, an increased potential for cooperation with that industry developing globally, and among States Parties, is evidently opening up. By strengthening the operation of the Convention and involving trade and industry in the implementation of the convention, it contributes to achieving its purpose. The Technical Secretariat feels encouraged to keep in close contact with relevant experts and industry from all States Parties. Just as in the security field, non-state actors who are not industry-related, but emanate from civil society, are mostly from the traditionally industrialized states, encouraging individuals or groups to engage also from newly industrializing states and from those countries which do not yet have companies involved in the chemical industry.

Non-governmental stakeholders were explicitly addressed at several instances in the CWC Review in April 2008. Its report states in paragraph 9.77: "The Second Review Conference reaffirmed that raising the awareness of all stakeholders about the prohibitions and requirements of the Convention would

benefit national implementation. The Second Review Conference noted that voluntary measures by relevant industry and scientific communities to promote responsible conduct can also help to guard against chemical weapons, as defined in the Convention, being used” [..]. Paragraph 9.116 h “encouraged the OPCW to continue to develop relations and partnerships as appropriate with relevant regional and international organizations including international organizations related to chemical safety, chemical industry associations, the private sector and civil society, in order to promote universality and awareness of the objectives and purposes of the Convention. The Second Review Conference welcomed the interest of such groups in the work of the OPCW, including the active engagement of chemical industry.” [..] Paragraph 9.136: “The Second Review Conference welcomed recent experience of interactions between National Authorities and other stakeholders in the OPCW from governments and the private sector. It underlined the importance of the involvement of all stakeholders, including the chemical industry and the scientific community in the promotion of the Convention’s goals and in supporting national implementation. It encouraged the development of such cooperation, with due regard to the role and responsibilities of States Parties and their National Authorities, on the broadest possible geographical basis.”

UN Security Council Resolution 1540, 28 April 2004

This SC Resolution is one of the main United Nations responses to the attacks on the United States in September 2001, commonly referred to as “9/11”. It is the Security Council’s resolution that coordinates the international community’s implementation of existing conventions that have relevance to the combating of terrorism.

Elizabeth Turpen (The Stimson Center, 2007) writes: “The 1540 Committee consists of the fifteen states currently serving on the UN Security Council and eight outside experts. The Committee is doing yeoman's work in trying to advance awareness of the Resolution, cajole Members to meet their reporting requirements, and facilitate the needs assessment processes requisite to match outstanding needs with available assistance. But the ability of the Committee remains limited not only by its own internal capacity, both financial and human, and also the dictates of the Resolution itself and the particular constraints of UN politics. International organizations such as the IAEA and OPCW, regional organizations, and non-governmental organizations in particular can play a critical role in overcoming the Committee's limitations. NGOs can fill the gaps among the UN, Member States, and international organizations due to their flexibility and responsiveness, which are derived in part from a lack of political constraints. By filling these gaps, NGOs can perform vital functions in fulfillment of the Resolution's objectives. In addition, NGOs often have accrued insights or expertise that can be instrumental in

supplementing the work of the 1540 Committee as well as states supporting implementation.”

The link between UN resolutions to combat terrorism and the CWC, BTWC and NPT is already there. But practical work can be hampered by different mandates and different constituencies in national capitals that do not always interact or connect with each other.

At an expert seminar at the Clingendael Institute on 26 March 2009 various speakers from the perspectives of IAEA, CWC, BTWC and 1540 discussed the way forward. Some sort of a model was favourably commented upon, with the umbrella-like Resolution 1540 overseeing the combating of terrorism through a tailor-made approach per state on the basis of its national reports, as mandated by that resolution. In the capitals, agencies would be encouraged to synergize, as each specific security regime has its own national constituency. To involve donors’ support for building implementation capabilities, a flexible coordination could help and a practical approach to funding procedures by donors like the EU (Joint Action). If reporting under Resolution 1540 could be improved and states acting in the OPCW, IAEA and BTWC could encourage that their reporting be shared with the 1540 Committee, greater transparency in implementing the Resolution would be within reach, which is of particular importance in relation to effective export control.

Some pathways towards further research

Multi-layered partnerships in security governance are both an opportunity and a challenge. Can the recognition that governance is carried out jointly by states and non-state actors make the behavior of the actors involved more predictable, both at state and non-state level? Can this help to build 'coalitions' that can formulate realistic objectives and means to achieve these jointly? Two publications contribute to a tentative answer and are pointing the way.

For policymaking the role of NGOs in international politics prompts some questions. How do non-state civil society groups make a difference in a) multilateral decision-making and b) implementing rules set for the international community?

Can they be considered as actors or are they mostly detractors? In what manner can they help integrate and legitimize rule-setting and implementing practices? What cannot be expected? Pattberg (*Business Power in Global Governance*) thinks of global governance in terms of **an emerging global political system**. This would seem fruitful to pursue without making claims about the relevance and potential of one particular institutional form. But he also poses questions about broader effects: "To what extent have these arrangements had learning effects? Have they migrated to or been emulated in other policy areas? Have they contributed to a general strengthening of relevant norms both at the global and local levels? "

This is an interesting exercise and it points to the value of not looking at specific governance arrangements in isolation, but **rather as components in a larger process** of, in his words, "reorganization of political order." This is linked with what inspired Morten Ougaard (*Private Institutions and Business Power*): "Furthermore, the discussion points to the conclusion that the multiple ways in which business and global governance interact and engage with each other is an important and challenging subject for further research and theory building. In this endeavor, however, **it would be fruitful with less focus on institutional forms and a singular perspective on the power of business, and with more emphasis on global governance as a strategic terrain**

where business has a lot of power and is favored by material, political, and ideational conditions, but where outcomes are shaped by an ongoing strategic interaction between a diverse set of public and private actors.”[..] (emphasis added).

Some NGOs are active in the field of small arms, while others address issues of nuclear non-proliferation. Further research needs to be carried out on two related issues: effectiveness and sustainability. “We can assume that the most significant factor is the reliability of funding sources, but we speculate that other features of the organization may also be important: leadership, effective organization, successful promotion, competitiveness, and others. The impact of NGOs on peace and security affairs in the long run will be tied to the sustainability of their efforts in this area.” (‘Global Governance and NGOs’, by Chantal de Jonge Oudenraat and Virginia Haufler, see endnotes).

A 2003 paper (Rob van Gestel, Self Regulation and Environmental Law) states: “How can we be sure that an organisation is trustworthy enough for us to rely on its internal procedures for compliance monitoring and to be able to lower, for example, the priority for routine inspections? [..] Perhaps the approach taken by the United States Environmental Protection Agency (EPA) in its 'Performance Track' programme may teach us something here. [..] Since 1995, the U.S. EPA has developed a policy in 'Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations (or the EPA's Audit Policy). The purpose of this policy is to improve the protection of human health and of the environment by encouraging regulated entities to voluntarily *discover*, promptly *disclose* and expeditiously *correct* violations of federal environmental regulations”.

An adaptation of Van Gestel’s benchmarks (from environmental compliance) for *Non-State Stakeholders for Security* is offered here for further debate. Developing these can lead to a monitoring and compliance policy on the basis of past experiences notably with industry and laboratories. These benchmarks would read as follows:

- the degree to which compliance with certain rules or permit conditions contributes to security (for instance, mere administrative regulations versus standards);
- the general attitude towards compliance in a certain branch (branch-related factors may also be strong international competition or the number of risk-seeking entrepreneurs);
- the compliance record of a NSSS (business) in the past and its sensitivity to blaming and shaming;
- the probability that certain violations will occur if (national or international) inspection frequencies are lowered because of the existence of informal control mechanisms (the alertness of NGOs, media attention etc.);

- the degree to which third parties, such as local residents and NGOs, have an interest in regular inspections;
- the amount of manpower and means that are necessary to discover offences in relation to success in terms of finding violations (the number of inspections related to the odds of tracing offences, on the one hand, and the odds of discovering non-conformity by performing an individual investigation because of the complexity of the facility, on the other hand);
- the degree to which other overseers in related policy areas conduct inspections that may yield relevant information about the attitude towards compliance;
- the degree to which other parties (the regulated addressees or third parties such as certification bodies) already monitor compliance and the willingness to be open about violations.

Conclusion

The cases selected in this paper illustrate that NSSS have a vital importance in certain areas for an internationally functioning regime: by pressurizing governments, by providing and channelling impetus for a more effective implementation of regime rules and by building legitimacy for these rules in the wider national and international community.

Non-state stakeholders in security can be considered as co-providers of security as the state cannot fully provide for this public good. NSSS are at the forefront of many modern-day challenges to security and safety, as they are in the field of industry, trade, science and technology. They could do better in helping to integrate and legitimize both rule-setting and implementing practices within security regimes.

However, there are limits to what NSSS can deliver. The key is joined-up approaches between states and non-states. Non-governmental stakeholders beyond the abstract concept have a role in implementing and reinforcing the effectiveness of internationally agreed security regimes in arms control and disarmament.

Can lessons be drawn from their practical experience that point to ways to systematically involve these actors, starting from a governmental perspective? These can cover other related international regimes like combating terrorism and export controls concerning items regulated by arrangements like the Australia Group.

- Such Non-State Security Stakeholders can be of vital importance:
- for developing external and internal policies by state institutions,
- for co-opting into campaigns by pressurizing unwilling governments,
- for increased implementing impetus and
- for monitoring the effectiveness of regulatory regimes, and - last but not least
- for building legitimacy.

In sum: non-state stakeholders are vital for a *sustainable governance of security*.

Some suggestions are offered as a conclusion for acting upon the contribution that is made by non-state stakeholders to security. State-level agents could find it worthwhile to explore the following pathways:

1. Do national foreign and domestic policies consciously include the actors beyond the state as enablers of effective and sustainable government action in the field of international security? If not, why?
2. What ‘easy gains’ can be identified for applying this approach? Might it increase the effectiveness and credibility of the provision of security by the state?
3. What further operational research would be useful and necessary to unearth more empirical evidence on which to act upon?
4. How can non-state security stakeholders work towards a proactive state-level attitude to their contributions? For such communication, the background provided in this Issues paper may help to find a common language.

Recommended reading

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- Yseult Marique, “The Rule-Making Powers of Independent Administrative Agencies (‘QUANGOs’),vol. 11.3 Electronic Journal of Comparative Law, (December 2007)
- Quentin Martens and Marc Naether “NGO's advocacy in European foreign policy: a new civil society”, in *Studia Diplomatica* 62/2009
- Morten Ougaard, Copenhagen Business School ; REVIEW ESSAY “Private Institutions and Business Power”, in: *Global Governance* vol.14 no.3 August 2008, pp 387-403
- Benjamin Perrin ”The Threat and Opportunity of Non-State Actors to a Conservative Foreign Policy” *Canada’s Journal of Ideas* 28 July 2009
- Professor Jan Aart Scholte (Warwick University, Coventry) “Globalization: a Critical Introduction”; 2nd edition, 2005.
- Elizabeth Turpen: “Non-State Actors and Nonproliferation: The NGO Role in Implementing UNSCR 1540” August 6, 2007 The Stimson Center
- Oran R. Young, W. Bradnee Chambers, Joy A. Kim and Claudia ten Have (ed), “Institutional interplay: Bio safety and trade”; United Nations University Press 2008

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- CEFIC, 3 June 2008: Dual Use Goods and the CWC at the European Council for the Chemicals Industry (CEFIC)- Neil Harvey, Issues Manager, CEFIC
- Harvard Sussex Program: www.sussex.ac.uk/Units/spru/hsp/Harvard-Sussex-Program-mission.htm
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- The Netherlands government Advisory Council on International relations: “The role of NGOs and the private sector in international relations” 2006, www.aiv-advies.nl
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- Permanent Representative of the Netherlands to the OPCW 2005-2008.
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