

# PIN

Processes of International Negotiation

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## Negotiation Competences

Key proficiency for inspectors in WMD arms  
control verification

*On-Site Inspections are key to the implementation of many international agreements on arms control. While some inspection processes are well defined and structured, those that must be conducted by inspectors of the CTBTO are by nature likely to be contested, and are more fluid in character. This requires of them not only technical skills but high-level negotiation competencies in order to deliver effectively to their mandate.*

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## Introduction

Since the 1980's On-Site Inspection (OSI) became a fundamental element to Weapons of Mass Destruction (WMD) treaty regimes. As much as such agreements tried to be comprehensive some issues always crop up during the OSI which the inspection team has to negotiate with the Inspected State representative. Weapon inspectors are selected based on their knowledge of the use of the specific technology relevant to the agreement, rather than their diplomatic or negotiation skills. It therefore became obvious that they need to be versed in negotiation aspects that need to be included in their training programme.

The two main international organisations that conduct such inspections, the Organisation for the Prohibition of Chemical Weapons (OPCW) and the International Atomic Energy Agency (IAEA)<sup>1</sup> function with a standing inspectorate in a predefined environment. A detailed inspection process is negotiated in advance by the organisation with each member state. The inspected environment

is usually a complex of buildings, for which the detailed blue-prints are provided long in advance, studied, and included in the negotiated inspection contract which also includes a schedule, routes and activities to be exercised during an inspection. Inspection regimes follow a long-term pattern of routine inspections, with inspectors watching for possible departure from a defined material flow (IAEA) or the use of restricted chemicals (OPCW). Not much is left for the inspector to negotiate; the main issue to be negotiated in the OPCW inspection is the perimeter to be defined and closed around the inspected complex and possible use of managed access by the inspected state; in any case of misunderstanding the issue may be deferred for a later discussion between the state and the organisation and checked at a following inspection. IAEA and OPCW inspection regimes also include the possibility for a challenge inspection; an option seldom used in the IAEA case and never in the OPCW case.

## The special case of CTBT inspection

The Comprehensive Nuclear-Test-Ban Treaty (CTBT)<sup>2</sup> OSI regime presents special

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<sup>1</sup> For a study of IAEA inspection process see for example Avenhaus R, Kremenyuk VA, Sjöstedt G, Editors (2002), *"Containing the Atom: International Negotiations on Nuclear Security and Safety"*, Lexington Books.

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<sup>2</sup> The CTBT has not yet entered into force, and an on-site inspection may be conducted only after entry into force. Notwithstanding, the

challenges to the secretariat and the inspectors. While similarities exist with other inspection regimes, there are significant differences (see table 1) demanding high-level negotiation skills by the inspectors during an inspection. Differences also include: no standing inspectorate, no routine inspections, multitude of technologies, unknown (until requested) and most probably a remote inspection area.

A CTBT inspection is practically a challenge inspection, a "one shot" activity in which signs of an alleged underground clandestine nuclear explosion are being sought in a previously unfamiliar area. While the IAEA and OPCW usually face the local facility management, CTBT inspectors will face representatives of the inspected state with a team of experts and other members of relevant agencies.

Org.	Team (persons)	Main Equipment Technology	#	Weight, kg (typical)	Deployment	Duration (days)	Inspection area (type and size)
IAEA	2	Radiation detection	1	50	Planned ahead (routine inspection)	2 - 10 (typical)	Facility (as planned)
OPCW	4-12	Gas chromatograph/ mass spectrometer	1	200	Planned ahead (routine inspection)	Up to 3,5	Facility (as planned)
CTBTO	40	Visual observation, Radiation detection, Rad. Lab., Sampling, Seismic and Geophysical	17	> 50,000	No later than 6 days after being triggered by submission of inspection request (challenge inspection)	Up to 60 (possible extension by 70)	Up to 1000 sq km of unknown countryside

Table 1

process of OSI is being studied and analysed for this very special regime. For more detailed description see Melamud M., Meerts P., Zartman I. W., Editors (2014), "*Banning the Bang or the Bomb? Negotiating the Nuclear Test Ban Regime*", Cambridge University Press.

As inspectors must enter a site within 6 days of a request for an inspection preparation time is limited. These are

difficult, strained situations. Guilty nations are likely to resist inspections, but even if innocent they may be obstructive if they feel insulted, or have secret installations or are conducting other secret activities inside the inspection area. Hence, inspectors of the CTBTO must negotiate the details of an inspection on site - access, measurements to be taken, logistical issues etc. In this sense they are not simply monitors but bridge-builders – they must deliver on their mandate, but in a manner that strengthens rather than undermines international relations, or turns an already difficult situation into a tinderbox. Their work is one of diplomacy as much as inspection, and **their negotiation skills have to be flexible to specific scenarios of CTBT inspections.**

The CTBT states that "The sole purpose of an on-site inspection shall be to clarify whether a nuclear weapon test explosion ... has been carried out in violation" of the Treaty; the task of the inspection team is to persuade officials of the inspected state suspected of a clandestine nuclear explosion to provide assistance for its access for data collection purposes according to the CTBT organisation mandate. Negotiation competencies are important in the CTBT case because of an

extended inspection period, large inspection teams and initially unknown and large inspection areas; and conflicts may arise on a daily basis regarding the implementation of the inspection mandate, and these cannot be referred to a higher authority or postponed. In short there is high probability of negotiations being required between an inspector and state representatives, and **it is critical that inspectors understand their own powers, as well as the power dynamic in which they must exercise these.**

Negotiation is centrally a process of persuasive communication. Inspection teams need skills in building rapport, establishing credibility, retaining professional focus and image, and demonstrating sensitivity to the concerns of the other party – and using these **to persuade the other party to cooperate with rather than resist inspection activities.**

### **Key: the inspection team mission**

The power of an inspection team (IT) lies at one level in international law and the terms of the Treaty. Its **opening position is that its task is to fulfil its mandate under the authority of the international community.** While the IT members will

be selected on their technical expertise rather than their negotiation skills, the inspected state has no restrictions and may include lawyers and negotiation experts in its team. Therefore, much hangs on the capacity of the CTBTO inspectors to negotiate. Technical experts in the **IT have to guide the process in terms of what they need to do for data collection purposes** and this may require some flexibility of approach and negotiation. This is therefore **an important aim in training inspection teams**.

One trap to be avoided by an IT is being drawn into time absorbing legal discussions about interpretations of Treaty paragraphs. Since the IT is essentially on its own, without lawyers or help from other organisation organs, **it needs to spend most of its time collecting data from the field**, where its members' expertise really lies.

### **What is needed: method and tools**

It is the IT choice for either seeking the assistance of the inspected state's officials in getting the job done, or pushing past them to do it; in any case they will need to persuade the State Representative in order not to be blocked. Persuasion strategies require attention first to the

attributes of those who must be persuaded. Technical experts amongst the inspected state team members for instance are unlikely to be persuaded if the inspection team does not include individuals with matching or superior expertise; **demonstrable competence of inspection team members in inspection procedures and application of the relevant clauses in the Treaty will be important in conveying confidence and authority**. Persuasive messaging works essentially by showing a target group how tensions raised through a situation, such as an inspection, can be released. Threats and bullying may work in some instances, but often not. Far better is to **build a cooperative relationship with the inspected state than to generate resistance – 'pull', rather than 'push' strategies** are more effective to this end. **Framing the task in a manner that evokes a sense of joint benefit will be more useful than an approach of bullying**. At the same time inspectors cannot afford to be duped, or bullied themselves.

Negotiations during the 60 days of inspection (which may be extended up to 130 days) necessarily occur *ad seriatim* rather than in a single, comprehensive negotiation. In other words, each stage of

the inspection process introduces a mini-negotiation that takes place and reaches a conclusion before the onset of the next negotiation opportunity, and generally there are few options to return to issues negotiated previously as an IT arrives at later stages of the inspection process. **Inspectors therefore need to guard against over-committing to terms that might close out later steps in inspection processes.** In short all parties need to enter the inspection 'as a process', with an awareness that negotiation is an ongoing element of an inspection with some possible steps only surfacing based on discoveries emerging early in the work.

On entering a conflict an inspector/negotiator needs clear understanding both of his/her own team but also that of others involved (how each defines themselves and who they represent). They need insight into their own and other parties' choices over *whether* to negotiate on a matter as opposed to simply imposing a preferred solution (coercion) or seeking redress through the law (rights approach). Such choices powerfully shape relations in terms of perceptions of reciprocal legitimacy, and intentions and capacity of one another to use coercive or

cooperative tactics. Beyond this negotiators need to think through their own and the other parties' choices over *who* to negotiate with; on *what* issues (control over agendas). **These requirements put a heavy demand on the inspection team leader** who is in charge of the implementation of the inspection in an efficient manner.

Negotiations of course occur between people – *characters* influence processes and outcomes. The inspected state team is likely to be culturally homogenous, or at least share a common national interest. The CTBT inspection team will be heterogeneous, composed of experts from diverse cultural backgrounds united though by shared purpose. *Cultural* differences may result in communication gaps and misunderstandings around a negotiation table but once recognised these could usually be remedied in some way. The purpose of a negotiation is not to change the personalities or cultures of negotiation partners, but negotiators must be keenly sensitive to their impact on a negotiation process and ensure they do not do not distract them from the core issues at stake. Managing the impact of characters on process is instrumental to the pursuit of desired outcomes. The

upshot of this issue is that **the organisation has to develop an *organisational negotiation culture* to be part of the training programme for inspectors.**

**Notwithstanding its authority under the Treaty, the IT operates on the territory of a host sovereign state.** This state has the authority to take any decision and endure the consequences, unlike the IT that is constrained by its mandate and the OSI Manual written by the Conference of States Parties. Unlike the inspected state, the IT does not have tools to impose on the state any action it wishes. **The one strong tool that can be used by the team is its reports to the Executive Council;** these reports according to the Treaty have to include "An account of the cooperation granted during the on-site inspection" and "A factual description of the extent of the access granted, including the alternative means provided to the team, during the on-site inspection." This is the key source of influence of an IT, as the Executive Council is the official organ of the organisation and makes the final decision as to whether there was a violation of the Treaty, based mainly on the IT reports. As the IT is primarily an expert technical team, its report on access not granted has

to be based on good technical basis, **showing that it could not fulfil its Mandate** without a specific access and that no alternative means were provided by the State to help in covering their need.

Beyond all this there may be *secondary parties* on the side of the inspected state who are interested in the process and outcome of the inspection, such as the military, environmental agencies or external nations whose interests might be affected. On the IT side these may be team members who did not participate in the specific negotiation case or the observer representing the state that requested the inspection; only other external agencies for the inspection team may be members of the technical secretariat who are stationed in Vienna and officially are not taking part in the inspection, or the DG of the CTBTO who is responsible for the inspection. This can add to an already asymmetric situation between the two sides of and distort direct negotiation processes, **which must become evident to the inspectors through the training process.**

### Conclusion

Considering the special aspects of the CTBT on-site inspection regime, it is

obvious that without negotiation skills the technical skills of the IT members may never find full expression. For this reason, the organizations that employ OSI, and especially the CTBTO, should place high emphasis negotiation training. Such training, based on basic negotiation skills, needs to take into account possible specific OSI situations as highlighted through this document. Most important is for the organisation to develop an *organisational negotiation culture* to be part of the training programme for inspectors. This *culture* needs to cover competence of inspection team members in the Treaty inspection procedures, thus conveying confidence and authority, on the one hand, and knowledge of framing the task in a manner that evokes a sense of joint benefit with the Inspected State Team in order to fulfil the IT Mandate the best way possible.

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