



Follow up on briefing paper number 3: Moving beyond the stalemate: addressing the nuclear challenge by supranational means¹

Ruud Lubbers, April 2006²

In CIEP Briefing Paper Number 3, published in August 2005, Ruud Lubbers argued that the problems surrounding nuclear weapons proliferation needed to be addressed by the IAEA, upgraded to a supranational organisation, with the accompanying competences, to oversee the nuclear sectors in the world. This follow-up starts with discussing the speech of dr. Mohamed ElBaradei while accepting the Noble Price for Peace in December 2005. The paper continues by reaffirming the need for a supranational nuclear proliferation regime instead of a 'case-by-case approach', because such an approach offers no guarantees that emerging countries do not feel the need to develop nuclear arms for upping their prestige nor that they feel the need for nuclear arms to protect national interests. It is important to create a situation in which emerging countries feel not threatened, because arms control is visible, and at the same time, that there is a generous attitude to share knowledge for Atoms for Peace. The article continues by discussing a number of points that need to be addressed when striving for upgrading the IAEA to a supranational organisation.

I. Mohamed ElBaradei is in charge of the International Atomic Energy Agency in Vienna, and he and his organisation received the Nobel Prize last year. On 10 December he received the prize in Oslo and he used the opportunity in his speech to propose some steps forward from the current situation.³ Before turning to ElBaradei's steps, it is important to remember the delicate position he is in. It is therefore no surprise that in his Nobel Prize winning speech, ElBaradei does not ask for a supranational authority, but remains cautious and instead stresses that the current inspection regime needs to be strengthened. This caution is understandable because despite proposals from the IAEA to modestly adapt the non-proliferation regime, the year 2005 ended with no consensus on how best to strengthen the nuclear non-proliferation and nuclear disarmament regime.

¹ The original briefing paper can be found on the CIEP website: <http://www.clingendael.nl/ciep/publications/briefing%2Dpapers/>.

² The views expressed in this article are those of the author and not necessarily those of the Clingendael International Energy Programme.

³ ElBaradei, M., *The Nobel Lecture*, 10 December 2005, www.iaea.org, see News Centre.

Given this turn of events last year, ElBaradei necessarily had to exercise caution when receiving his prize in order not to disturb the delicate ongoing debate on non proliferation (NPT).

First, he pointed out that the inspections on nuclear material will be improved and that this material needs to be kept out of hands of extremist groups. This first argument focuses the attention of major players in the nuclear arena to a current concern in many capital cities. He further cautioned the world for nuclear arms by stating that: "Either we continue to rely on nuclear weapons and we face the reality that in the next 20 – 30 years 20 or 30 countries will have nuclear weapons, or each country must cease its nuclear weapons program and destroy existing nuclear arsenals".

Second, he proposes to develop a reserve fuel bank under control of the IAEA. Can we not reduce the risks of the proliferation of enrichment facilities over the world by offering nuclear fuels to all those countries that have no enrichment capacity? To guarantee them the fissile material that they need for Atoms for Peace, e.g. for electricity generation?

There are reasons to believe that this proposal did not originate with ElBaradei, but it is very clever that he is the one that proclaimed it.

In any case, with all the merits of this proposal there are two follow-up questions :

- Would such a reserve fuel bank suffice or do we need a more fundamental and bold comprehensive step forward?
- Is the wording "under control" ambiguous and therefore requires a clarification with regard to supranationality?

The issue of "under control" with regard to a fuel bank brings us to the political dilemma of the nuclear problem: how to work further on non-proliferation, while facilitating the worldwide use of Atoms for Peace. The dilemma lies in the fact that on the one hand there exists a UN agency (IAEA) that is capable and mandated to work on NPT,, while on the other hand the largest power in the world is convinced that such a task should best be left to them.

II. In response to my argument to seek a supranational solution with the IAEA for NPT and Atoms for Peace, comparable to the Euratom Treaty that leaves the European fissile material in supranational hands, it was suggested that each problem should be solved on a case-by-case footing: "Is it not better", they asked me, "to find solutions case by case? To sit down with our friends in Teheran and to find a solution and do so case by case?" This is an option of course, but I find it risky. The distrust among nations and the fear for terrorism could prevent the world to find a system with which the nuclear arms potential can be gradually reduced. It is essential that emerging countries do not develop the need for nuclear arms for upping their prestige nor that they need them to protect their national interests. It is important to create a situation in which they feel not threatened, because arms control is visible, and at the same time, that there is a generous attitude to share knowledge for Atoms for Peace. I am not inventing this idea; it was Mr Baruch of the United States in 1946 who proposed more generous knowledge sharing but at the same time he said "Okay, but let's be realistic; we need a water tight control on it". To realise such a watertight control it is clear that an inspection regime alone will not suffice, but that the transfer of ownership of fissile material to an international agency is an essential precondition for the diffusion of knowledge and NPT to work. This indeed was and is also legal

practice for many decades in Euratom, the regional arrangement of the European Union member states.

III. Taking into consideration all the above, there are a few issues that I would like to stress in addition to my earlier arguments for supranationality in the ‘stalemate’ article:

1. Currently the nuclear weapon states do not live up to their commitments according to the NPT, i.e. to realize nuclear disarmament. According to the International Court of Justice there can be no doubt that this is not only a political but also a legal obligation.
2. In line with this, nuclear weapon states should commit on agreeing on a more effective way forward to a nuclear free world by strengthening the IAEA. The IAEA has to be upgraded to become supranational and to be effective, as much as for non-proliferation as reduction and banning of nuclear weapons; as well as in relation to Atoms for Peace and for development.
3. The two ambitions of the NPT, i.e. non-proliferation and the reduction and banning of nuclear weapons, are indeed interrelated, and can only be pursued in an effective way if the IAEA becomes supranational.
4. What would “supranational” mean ?
In line with the principles of the NPT one would have to differentiate between the existing nuclear weapons stock and the prevention of non-proliferation of weapon-grade fissile materials, uranium and plutonium.
5. To practice an optimal use of “Atoms for Peace”, without accepting any risk of proliferation into nuclear arms, one needs the IAEA to become multinational and to exert full control if not the ownership, not economically but legally, of the fissile material, uranium and plutonium and the installations to enrich.⁴ Such a control will only be effective if IAEA becomes supranational, meaning that countries can no longer opt out as there will be an “automatic licence” to enforce effective control through Blue Helmets. The General Assembly should provide “the automatic licence” to the Security Council or to a “Security Council plus”.
6. “Security Council plus” is a reference to the possibility to “redefine” the large countries mandated by the General Assembly to supervise the updated supranational IAEA and the Blue Helmets decisions. For example, for this purpose the P5 could be expanded with India, Brazil, South Africa and possibly Japan.
These four latter countries are growing in importance and possess nuclear technology. Although India today is obviously a nuclear arm state it’s highly probable India continues to strive to a nuclear arms free world under the condition that the key five re-commit in a credible way to do so as well.
Brazil has chosen for the NPT, even when it was capable to develop nuclear arms;

⁴ There are questions to be addressed in a later stage, such as :

- Should this material actually be the property of the IAEA, or placed under its control, i.e. at a supranational level ?
- Should the lands upon which nuclear installations are located (for research, production, storage) be supranational property?

probably it will be very committed to a supranational IAEA.

South-Africa is very advanced in nuclear technology and the key African country.

Now that the world is wrestling with the composition of the Security Council there is the more reason to go for this “Security Council plus” approach to supervise the updated supranational IAEA and to gain the needed legitimacy to achieve and where needed to intervene on behalf of the UN.

7. Such a supranational IAEA will be only possible and effective (politically and technically) when also in addition to the reduction and banning of existing nuclear arms, the reduction and banning of existing weapon-grade fissile materials becomes effective and credible.
8. Since the end of the Cold War the USA and the Russian Federation worked together in a laudable effort to reduce stock of highly enriched uranium and to control plutonium.
9. However, with regard to weapon grade fissile materials, it is now time to make a bold step forward. This would include :
 - a. A renewal by the General Assembly and all states to commit to “reduction and banning”;
 - b. In relation to that, a commitment of states who possess nuclear arms, respectively weapon-grade fissile material, to declare the materials possessed, to the upgraded IAEA; and
 - c. To permit the upgraded IAEA to verify and to monitor the existing and gradually reducing stock.
10. The needed transparency will prove to be a major stumble block, but it is crucial.
11. The other major stumble blocks will prove to be the necessity for “not recognized” nuclear arms states “to declare” their nuclear capabilities; and an agreement in the “Security Council plus” not to accept “free riders”.
12. The comprehensive approach above does not yet involve “Iran”. However, I can imagine that when the comprehensive approach is accepted in principle, Iran could accept “a freeze” on the way to a complete global agreement. During this freeze, i.e. a very limited number of centrifuges, Iran could accept full IAEA control possibly together with practicing enrichment only in multinational teams; for example Iranians, Russians, and perhaps Urenco’s staff.

With the Iran issue brought for the UN Security Council, the sense of urgency is growing that the world needs to develop a responsible approach to the joint issue of NPT and Atoms for Peace.

This is all the more needed while, in addition to what is happening in Iran and North Korea and the “irregular” nuclear status of Israel and Pakistan, the White House recently re-affirmed its doctrine of pre-emptive war against terrorists and hostile states with chemical, biological or nuclear weapons.

There must be a better way forward!