

SPECIAL SECTION

The Middle East at a Crossroads:  
How to Face the Perils of  
Nuclear Development in a Volatile Region



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*The global nuclear regime may have reached a crossroads: the states parties to the Nuclear Non-Proliferation Treaty have called for the establishment of a zone free of nuclear weapons and other weapons of mass destruction and their delivery systems in the Middle East. Now that Iran and the five permanent members of the UN Security Council plus Germany have reached a deal in Geneva over a phased verification of the peaceful character of Iran's nuclear program, the international community needs to address broader regional issues. Failure to move forward could imperil the global nonproliferation architecture. At the same time, little thought has been given to how this regional arrangement would work both internally (with its member states) and externally (with other organizations such as the International Atomic Energy Agency). This article reviews the obstacles and windows of opportunity for a comprehensive regional nuclear settlement by drawing lessons from recent history in Europe. In particular, the history of the European Atomic Energy Community suggests how a future regional organization with jurisdiction in all aspects of nuclear development should articulate its functions with existing international organizations such as the IAEA. In Europe, regional institutions have played a crucial role in creating trust among former warring nations and in harmonizing the regional and global nuclear orders. A EURATOM-like organization would be a great step for the Middle East and a great model for other regions that must deal with issues of global legal complexity (e.g., how they can harmonize regional and global orders so that they can pursue the same goals with different but compatible means). **KEYWORDS:** Middle East, EURATOM, weapons of mass destruction, regime complexity.*

NUCLEAR ENERGY IS ON THE RISE AND WITH THE DEVELOPMENT OF NEW nuclear power plant projects, especially in volatile regions like the Middle East, new security concerns are likely to dominate international affairs in the coming years. The International Atomic Energy Agency (IAEA) estimates significant growth in the use of nuclear energy worldwide—between 23 percent and 100 percent by 2030—although the agency's projections for 2030 are 1–9 percent lower than projections made in 2011.<sup>1</sup> The spread of nuclear

energy primarily involves some fast-growing Asian economies, but it also concerns the Middle East region, whose countries cite several “good” reasons for this Middle East “nuclear renaissance,” including: the need to diversify energy sources to meet growing domestic demands for electricity and address environmental concerns; the possibility for maximizing exports of oil and gas resources; the exploitation of nuclear technologies for water desalination; and national prestige. Over the past five years, at least thirteen countries in the region—from Morocco and Egypt to Qatar and Saudi Arabia—have announced new or renewed plans to explore the use of nuclear energy. The United Arab Emirates is at the forefront and is progressing successfully with its program to have four nuclear reactors in operation by 2020, while Egypt has announced its intention to boost its nuclear ambitions.

Under normal circumstances, the spread of nuclear energy for peaceful purposes should not be cause for particular concern, and, in fact, Article 4 of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) encourages it. But in the complex, unstable, and problematic Middle East context, a possible “nuclear renaissance” represents a potential nonproliferation challenge. The problem is well known and has to do with the inherently dual-use nature of sensitive nuclear technologies, whereby knowledge and technology necessary for peaceful uses of the atom are essentially the same as those used to produce a bomb. For instance, Iran’s neighbors see with distress the country’s slow but steady advances in its nuclear program, which include heavy investments in nuclear fuel cycle technologies that—like uranium enrichment centrifugal technologies—are essential to master for a country with nuclear military ambitions. Thus, if it is hard to predict how many of the countries in the Middle East will implement their nuclear programs, the prospects of a nuclear renaissance in this region underline the urgency of holding renewed discussions on a nuclear governance framework that can help buttress confidence and stability in the region.

To overcome the fears generated by nuclear development in this region, some countries have hailed the creation of a zone free of nuclear weapons and of other weapons of mass destruction and their delivery systems (WMDFFZ) in the Middle East as a solution to all the security concerns of each side. But without serious thinking on the political and legal conditions that would facilitate the creation of a WMDFFZ in the Middle East, such calls remain ritual invocations whose only purpose serves to mask (rather than unveil) the difficult realities of the region. In fact, many suspect that those states that plan on developing nuclear energy for peaceful reasons in fact also harbor military ambitions, and that the present global legal framework regulating nuclear development cannot be trusted for adequately addressing all the facets of the security problems raised by the region’s nuclear ambitions.

Starting with a brief history of this WMDFFZ proposal, we thus survey the legal and political obstacles that have so far blocked the establishment of a

WMDFZ in the Middle East. At the same time, we also present the reasons why we should be hopeful. And like the two other articles in this Special Section, this article contributes to the current debate on the WMDFZ project by proposing new venues for future negotiations.<sup>2</sup> In particular, we draw on the history of the European Atomic Energy Community (EURATOM) to discuss some of the legal dimensions that diplomats will need to address before they can put in place a regional treaty-based regime in a part of the world where the nuclear energy industry is growing and proliferation concerns are widespread. The particular perspective that we adopt here places the issue of regime complexity that would result from the creation of such a WMDFZ at the center of our reflections: indeed, we discuss how regional and global orders can be harmonized so as to reach the same goals through compatible means.<sup>3</sup>

### **The Proposal for a WMDFZ in the Middle East and Its History**

Viewed from afar, the establishment of a nuclear weapons-free zone (NWFZ) in the Middle East should not raise particular problems as far as its articulation with the NPT (the main instrument of the global nonproliferation regime) is concerned. Indeed, Article 7 of the NPT states that “nothing in this Treaty affects the right of any group of States to conclude regional treaties in order to assure the total absence of nuclear weapons in their respective territories.” It is not a coincidence that the idea of establishing a regional treaty-based governance framework with jurisdiction in nuclear affairs was first proposed in the wake of the NPT negotiations: in the mid-1970s, Iran and Egypt were the first to propose an NWFZ in the Middle East by sponsoring a 1974 UN General Assembly resolution. The initial proposal was expanded in 1990 to include all categories of weapons of mass destruction (WMD), in addition to nuclear ones, on the initiative of then Egyptian president Hosni Mubarak who acknowledged the threat posed by the presence of chemical and biological weapons in the region and the need to attract the support of Israel and the United States by encouraging positive trade-offs in a WMD disarmament process. It was even endorsed by Israel and other participants to the Madrid peace process of the early 1990s, after the deployment of Western troops and UN inspectors in the Gulf after the Gulf War revealed the extent to which Iraq had been close to mastering nuclear weapons.<sup>4</sup>

In fact, it is the absence of progress toward the establishment of an NWFZ in the Middle East that may imperil the global nuclear nonproliferation regime. Indeed, during the 1995 NPT Review and Extension Conference, under the leadership of Egypt, many Arab and nonaligned countries conditioned their support for the indefinite extension of the NPT on a resolution that clearly calls on non-NPT signatories to accede to the treaty and accept full-scope IAEA safeguards (an obvious reference to Israel). The resolution additionally urges all members to fully cooperate with regional efforts to establish

“an effectively verifiable Middle East zone free of weapons of mass destruction, nuclear, chemical and biological, and their delivery systems.”<sup>5</sup> Long years of inaction, rhetorical support, and unproductive talks were finally shaken in the last NPT Review Conference of 2010, when the same commitment was reiterated in even clearer language and some first “practical steps” were finally agreed on in the final document of this conference: these included the decision to call on the UN Secretary-General and the cosponsors of the 1995 resolution (the United States, the United Kingdom, and Russia), in consultation with the states of the region, to convene a conference in 2012 on the establishment of a Middle East zone free of nuclear weapons and all other weapons of mass destruction. The UN Secretary-General was additionally required to appoint a facilitator with a mandate to support implementation of the 1995 resolution and undertake preparations for the 2012 conference.<sup>6</sup>

The absence of progress that followed from the designation in October 2011 of Finland as the host country to that future conference, and Finnish vice-minister of foreign affairs Jaakko Laajava as the facilitator of the event, is often cited as the main obstacle to the success of the next NPT Review Conference in 2015. Indeed, even though the facilitator and his team embarked on intense diplomatic activity in consultation with the countries of the region, by the end of 2012 preparations for the conference had been aborted, and Laajava could only pledge to continue efforts “to prepare the ground for the earliest possible convening of a successful conference, to be attended by all states of the region.”<sup>7</sup> But Russia stated that “not all countries in the Middle East have agreed to participate,”<sup>8</sup> and the United States underlined that, for the time being, the indefinite postponement was due to “present conditions in the Middle East and the fact that states in the region have not agreed on acceptable conditions.”<sup>9</sup>

The current Israeli opposition to the WMDFZ concept, spurred by its lack of trust in the international community’s ability to convince Iran to drop uranium enrichment activities, largely accounted for the failure to hold the WMDFZ conference in 2012. But beyond these political reasons, there are also important intellectual reasons that explain the conceptual difficulty of delineating the contours of a WMDFZ in the Middle East: the necessity to address a variety of goals (e.g., arms control, nuclear nonproliferation, and cooperative development in the peaceful applications of nuclear energy) requires that governmental experts and officials evaluate the issues at stake from a variety of disciplinary viewpoints (legal, geopolitical, historical, etc.). So far, the WMDFZ concept directly comes from a traditional arms control perspective, which aims at overcoming the issue of a WMD race in a radical and definitive fashion by imposing an absolute prohibition on the production, possession, transfer, deployment, and testing of any nuclear weapons or other weapons of mass destruction, including delivery systems. This is why its establishment is seen as a positive measure that will reinforce the goals of the NPT and the global nonproliferation regime as a whole.

But if (and when) the discussion on a WMDFZ progresses, it will become rapidly clear that important and unforeseen legal and institutional problems must be tackled in the context of the Middle East, especially if the region succeeds in a nuclear renaissance. If countries of the Middle East realize their promises of nuclear development, the governance bodies of such a zone will need to actively participate in the design of future projects. The new institutional design of the zone will thus need to be granted important decisionmaking powers. The governance structure of such a free zone will have to be more than a simple verification mechanism that regulates what already exists. It will have to be empowered to make decisions about the nuclear future of the region as well, and in a way that does not upset the existing institutions (both at the national and international levels) in charge of ensuring nonproliferation. This would inevitably raise concerns over the protection of the state sovereignty of its members, and the sharing of responsibilities over controls between national, regional, and global agencies (like the IAEA). This is why the issue of regime complexity will need to be addressed along with the other political and legal obstacles,<sup>10</sup> and international law specialists are usually better trained than arms control specialists to think through these issues.

### **Legal Challenges and Political Obstacles to a WMDFZ in the Middle East**

The obstacles to a WMDFZ are formidable, numerous, and long-standing.<sup>11</sup> The Middle East is a highly troubled, militarized region that has experienced intense inter- and intrastate violence, territorial disputes, foreign meddling and intervention, ethnic and sectarian rivalries, and general political instability resulting from precarious domestic legitimacy. Regional cooperation and integration are minimal. In this problematic context, it has proved impossible to make any substantial progress in arms control negotiations over nonconventional weapons. Three main sets of issues deserve to be carefully considered before a treaty-based approach to nuclear disarmament and cooperation can move forward.

#### *State Sovereignty and Its International Limitations*

The first and most fundamental challenge is represented by the belief among regional players in the desirability of WMD for the protection of state sovereignty against all kinds of threats. As such, WMD and their delivery systems are perceived as being a credible deterrent against external threats, as a force equalizer compensating conventional military capabilities, as a prestige and status enhancer, and as a product of domestic politics dynamics. The evidence of these ways of thinking is found in patterns of pursuit, acquisition, and use of WMD by various Middle East countries.

Overall, Israel's nuclear policy and the controversial Iranian nuclear program represent the greatest examples of how such concerns for protect-

ing absolute state sovereignty over a territory are interconnected in the pursuit of WMD or of their capabilities. For Israel, the bomb is the ultimate guarantor of its survival in a region of hostile neighbors, some of whom do not recognize its right to exist. Israel insists on possessing options for the defense of its sovereignty that are independent of external assistance. In this regard, Israel's nukes are thought to provide a long-term insurance policy against existential threats and to deter a massive conventional attack.<sup>12</sup> Rather than seeing adherence to the NPT as a source of greater security, Israel has consistently refrained from expressing any commitment to adhere to the NPT. But as Shai Feldman writes, "in contrast to India, Israel did not dispute the rationale of the NPT, . . . it only viewed the application of the treaty as flawed."<sup>13</sup> This was illustrated by the fact that the IAEA had not prevented clandestine nuclear proliferation in the case of Pakistani sales of centrifuges to Iran—and other attempts by Pakistan to sell these technologies to Libya and Iraq.

While Iran continues to declare that its program is for peaceful purposes, its neighbors and the international community are suspicious of Tehran's real intentions. For some observers, Iran's willingness to incur such high costs to push forward the development of fuel cycle capabilities suggests that, at a minimum, Iranian leaders wish to "hedge their bets";<sup>14</sup> that is, achieve a capability that would enable the acquisition of nukes relatively quickly if at a later date it chooses to do so. Its consistent pursuit of such technologies despite the high costs leads some to believe that Iran sees in the acquisition of such technologies a way to defend its state sovereignty, once and for all, in a way not unlike how Israel views its own nuclear weapons.

The same may be true of Bashar al-Assad's perception of chemical weapons: the use of chemical weapons in the Syrian civil war was the most recent manifestation of the inhumane and highly destabilizing nature of WMD, but also proof that these weapons are seen as a powerful tool to ensure the regime's continued sovereignty over (most of) its territory, despite continued months of civil war. In sum, there is evidence that WMD and their delivery systems play an important role in the security calculations of several state leaders who hope to maintain their absolute sovereignty and regime stability thanks to WMD possession (and, in some cases, use). This consideration, in turn, explains not only the mistrust among regional leaders about the intentions and interests of their neighbors, but also the low degree of regional cooperation.

As long as there is no agreement that state sovereignty should not be conceived in absolute terms (as if the choice were between having complete sovereignty or no sovereignty at all), the discussion of the vast array of issues in need of resolution to establish a WMDFFZ will require an inordinate amount of international wrangling to get the parties to the negotiating table. Indeed, no progress will be made on the road toward verified nuclear disarmament if states cling to the perception that they will lose power by aban-

doning their absolute sovereignty and by engaging in international and regional cooperative security.

On the other side, the recent phased agreement struck between Iran and the five permanent members of the UN Security Council plus Germany (P5+1) in Geneva on 24 November 2013 reflects a consensus on the desirability to offer Iran the chance to prove the peaceful character of its nuclear program, and a preparedness by Iran to accept some new limitation on its sovereignty in nuclear matters, particularly the acceptance of some additional guarantees not previously included in the NPT. The extent of these long-term limitations is what remains to be negotiated before the international community can safely rule out the possibility that Iran may pursue the goal of acquiring nuclear weapons. Similarly, al-Assad's acceptance of the plan put forward by the UN Security Council to proceed toward verified chemical disarmament shows that even such a despotic figure may find some advantage in limiting his state's sovereignty in these matters rather than in further violating the most basic rules of warfare.<sup>15</sup>

### *Political Instability*

A second major challenge has to do with the potentially adverse impact of the so-called Arab Spring. The risk is that the revolutionary transitions, which were either brought by foreign invasion (as in Iraq and Libya) or which responded to internal changes (as in Tunisia or Egypt), will bring more uncertainty, destabilization, radicalization, and diplomatic vacuum, thereby undermining the prospects of near-term negotiations on the schedule and agenda of a conference on a future WMDfZ in the Middle East.

The recent revolutionary transitions caused a shift in the priorities of regional leaders from advancing the WMDfZ project to more pressing domestic issues. Moreover, the possibility that Arab revolutions might radicalize domestic audiences toward hard-line positions on WMD issues cannot be ruled out. Rising nationalist and populist sentiments in Muslim civil society could hamper progress toward political dialogue and arms control. As noted by Michael Elleman, "The proverbial Arab street, empowered by recent political developments, will find it difficult to accept compromises that address Israel's security concerns without a resolution of the Palestinian issue and Israel's nuclear monopoly."<sup>16</sup>

Yet already in Egypt the tide is moving in the other direction, with the restoration of traditional domestic powers (in particular, the army) to political dominance. No one knows whether the new Egyptian leadership will seek popular support by adopting an uncompromising stance on these issues, or whether it will propose a bold new security framework that will change the terms of the regional conversation.

It is also hard to predict the regional impact of the destabilization of Iraq, with the establishment of a radical Islamist quasi-state in the north of the country: such destabilization may force the Iraqi government, the United

States, and Iran to form a new partnership, which could be extended to nuclear matters, or it may actually increase tension between Iran and its Arab neighbors.

### *Verification Challenges*

Finally, there exist formidable technical challenges in designing verification mechanisms that simultaneously apply to all three WMD categories and their delivery systems. What constitutes WMD is uncertain. What a delivery system entails will be equally controversial to determine, given the asymmetries in capability and geography, the emergence of new weapons such as unmanned aerial vehicles, the proliferation of cruise missile technology, and the progressive development of missile defenses.<sup>17</sup> The verification of the prohibitions of biological weapons is also an unresolved question, given the almost indistinguishable dual-use nature of biological agents and infrastructure. It is no coincidence that the 1975 Biological and Toxin Weapons Convention does not provide any verification mechanism.

In addition to the obvious technical challenges, important legal challenges also exist. The issue of how to verify the irreversible dismantlement of the Israeli nuclear arsenal will need particular attention. The specific sequence of steps leading to the establishment of the zone continues to stand out as the most formidable conceptual, as well as practical, obstacle hampering progress, given a hard-to-reconcile divide between the Israeli “peace first, zone second” approach and the Arab-Iranian “zone first, peace second” approach.<sup>18</sup> Furthermore, the existing treaties do not give a consensual road map to achieve both nuclear disarmament and enhanced cooperation.

In particular, the NPT does not clearly map out how such steps should be ordered because in Article 3(1) it forces only the non-nuclear weapons states (NNWS), but not the nuclear weapons states (NWS), to sign a safeguards agreement with the IAEA on all their “peaceful” activities using source and special fissionable materials. Thus, according to a first scenario, during an initial period, Israel’s signature would amount to only a freeze on its military nuclear activities, as Israel would adopt IAEA controls on all its dual-use facilities, but Israeli special fissionable materials already in nuclear warheads would escape IAEA controls. A second scenario (that is favored by Egypt and other Arab countries) also exists that is compatible with the NPT: Israel (like South Africa before) could first disarm and then, at the end of the process, sign and ratify the NPT as an NNWS. But a third scenario that radically differs from the latter is also compatible with the NPT: Israel could first sign the NPT as an NWS before changing its nuclear status during the establishment of a WMDfZ itself. Indeed, Article 9(3) of the NPT leaves this possibility open as it indicates that an NWS is a state “which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January 1967,” something that Israel could claim it did, if one considers that the

“cold test” that Israel presumably performed in the fall 1966<sup>19</sup> qualifies as a nuclear “explosion.” Thus, the NPT language is so open that three radically different scenarios can all be said not to violate the NPT—or to violate it, depending on one’s political views.

The NPT does not provide a common road map for future WMDFZ discussions, and it is likely that the issue of Israel’s nuclear disarmament (its timing, operation, and verification) will inevitably be ripe with legal conflicts of interpretation during the implementation of any agreed-on process. The need to harmonize the interpretation of the NPT with those of the future commitments of the states parties to a WMDFZ thus seems essential if one is to avoid dramatizing the potential conflicts between regional and global orders.

### **Experience from EURATOM: Reasons to Hope**

Given the roadblocks to establishing such a WMDFZ, in this section we consider some of the lessons learned from the existing NWFZs and the experience of EURATOM. Each case and zone around the world is unique and originates from different and specific conditions. There is no one-size-fits-all package of attributes that can be used in the Middle East, and generalizing from historical analogy must be approached with care. Still, a great deal of conceptual and practical experience is available and could be, *mutatis mutandis*, relevant to the Middle East context.<sup>20</sup>

#### *Unexpected Outcomes Are Always Possible*

The history of arms control and the experience of the existing NWFZs suggest that conditions in other regions did not always appear conducive to progress on similar issues, and favorable and unexpected outcomes can occur even in highly unstable and complex situations. For example, the Latin American NWFZ, which was conceived within the highly volatile period of the Cuban missile crisis, was long blocked by the antagonism of the two nuclear capable and rival states of Argentina and Brazil.<sup>21</sup> As the IAEA observes, “establishment of NWFZs was possible despite serious obstacles, such as geopolitical complexities and lack of trust. This success was achieved through a combination of political will and commitment, dialogue, flexibility, and an incremental step-by-step approach.”<sup>22</sup>

Moreover, windows of opportunity can suddenly open, especially in times of a crisis or radical transformation. The sense of urgency associated with the deteriorating present-day situation of WMD in the Middle East can create incentives for regional and extraregional players to address WMD issues in good faith and with a renewed commitment. Something of this sort happened, for example, in Latin America where the 1962 Cuban missile crisis catalyzed efforts to establish an NWFZ. Signs of hope have appeared in the past few months such as efforts to dismantle Syria’s stock of chemical

weapons and, more importantly, the substantial progress in the negotiation for a comprehensive solution of the Iranian nuclear issue.

### *The Linkage of Democracy and Nonproliferation*

The revolts sweeping through the Arab world are creating more uncertainty and instability in the immediate and short term. The dream that the Arab Spring's mid-term outcome would be a more democratic and peaceful Middle East seems to evade us, especially with the restoration of a military regime in Egypt and the continuation of the bloody Syrian conflict and its spillover to Iraq.

Yet the recent elections in Iran have brought a more centrist leader and, in the long term, we may still imagine that the military forces in power in Egypt can be convinced to pay more attention to the defense of the rule of law if they want to avoid sharing the same fate as the Mubarak regime ten years from now. If that is the case, limited progress toward democracy could create an opportunity for progress on the zone in a longer-term perspective. Indeed, the experience from the existing NWFZs demonstrates how democratizing countries are more likely to enter into regional arms control processes. For example, the political changes in South Africa, which led to the end of the apartheid regime, also led to a breakthrough in denuclearization and the subsequent establishment of the African zone. Quite similarly, the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco) was extended to the entire region only after the return to democracy by Brazil and Argentina.

In this regard, the experience of EURATOM also shows that the association between democratization and the stabilization of a regional framework can spur open interstate cooperation and verifiable technological development.<sup>23</sup> Indeed, the EURATOM Treaty was part of a series of treaties by which newly established democracies in Europe sought to reinforce democratic forms of governance and establish trust among them in a postwar context characterized by massive investments in conventional and nuclear dual-use technological infrastructure industries. It was not a coincidence that the EURATOM Treaty was signed by liberal democracies that feared that interstate technological competition could undermine their internal democratic institutions (as in the interwar period). Like the treaty establishing the Common Market, the EURATOM Treaty not only created research centers, a nuclear fuel procurement agency (the European Supply Agency), and a control agency, but also a whole democratic governance structure at the supranational level that was inspired by the liberal theory of the division of powers: the executive powers of the EURATOM Commission were balanced by the legislative powers of the Council of Ministers where each nation was represented (and the European Parliament was also given a consultative role). The EURATOM Treaty also empowered individuals with the right to

directly petition the European Court of Justice if they felt their rights as defined by the treaty were violated.

Yet we should not overestimate the differences between the political situation faced by the six founding states of the EURATOM Treaty in the early Cold War and the present situation of Middle Eastern states. In fact, most West European states had not fully accomplished their transformation from nonliberal to liberal states in the 1950s: France was deeply involved in a colonial fight against Algerian independence fighters at the outskirts of its territory; Italy and West Germany were not consolidated democracies; and West Germany was concerned with recovering its territorial integrity, with its eastern part under the control of a foreign Soviet-like government that it did not recognize. It is quite common to stress the differences between Europe and the Middle East,<sup>24</sup> but similarities also exist and comparisons are possible. Most important, one should never forget the centennial history of war and mistrust that characterized the interstate European relations until the end of the Cold War.

In fact, the political lessons of the EURATOM Treaty could have an even greater impact for the Middle East than its technical provisions, especially after it appears that the protesters who participated in the Arab Spring have failed to seize political power in most countries. The same forces that participated in massive protests could look to another domain, the judiciary, and fight to buttress the protection of their rights (e.g., the right to be informed of bio- or nuclear hazards) before courts of law.<sup>25</sup> In a region where national courts have often failed to fully protect citizens' rights and have upheld states' practices of opacity, giving access to new independent judiciary institutions can ensure that citizens' demands for transparency will consistently be heard by the authorities and that those potentially affected by new nuclear power projects engaged by their neighbors will have a chance to defend their rights before a common regional court. The creation of a regional judiciary modeled after the European Court of Justice, which citizens of the region could directly access, would send a strong signal that regimes care about the rule of law.

The predicted increase of nuclear power plants means that new nonproliferation concerns are likely to emerge out of the dual-use characteristics of many nuclear projects. Hence, the governance structure of a WMDFZ will need to include, like EURATOM did, a democratic mechanism of *ex ante* coordination between states, equally represented in a regional council, so that they can air their disputes before an independent commission and bring facts to the table. Furthermore, if future conflicts emerge between regional and global orders, then the parties to the zone should be able to harmonize their positions first at the regional level, in the council of the zone, before presenting their solutions to legal conflicts to the outside world (for instance, in subsequent NPT Review Conferences). To this extent, as in the case of

EURATOM states parties, which negotiated a common position when negotiating the NPT,<sup>26</sup> the future council of the zone should develop some competence over the nuclear foreign policy of each party, and the zone itself should have recognized international legal sovereignty so that it can represent the group of countries in international organizations such as the IAEA. The EURATOM Treaty established the international legal sovereignty of this European Community, which means that EURATOM can negotiate international agreements on behalf of its member states and sign agreements with international organizations. The council of a EURATOM-like structure in the Middle East could also prepare plans for the multilateralization of nuclear fuel cycle activities not only in Iran, but also in all the territories of the member states of such a new regional entity (as discussed by Mohamed Shaker in this issue).

### *Strengthening Regional Verification Mechanisms*

The experience in implementing NWFZs demonstrates that confidence in the ability to verify the provisions of a zone is a major requirement for successful negotiation and implementation.<sup>27</sup> Verification methods can be reinforced when mistrust is widespread, as is the case in the Middle East, and where there is the need to verify the dismantling of nuclear devices manufactured by a party before the entry into force of the treaty, as was the case for the African zone. A multilayered approach to verification involving a combination of international, regional, and bilateral commitments could be envisioned for the Middle East. Again, the experience of NWFZs helps in this regard. For instance, after the Latin American zone had been created, two countries with a particularly strong history of mistrust—Argentina and Brazil—instituted a bilateral specialized agency (Argentine-Brazilian Agency for Accounting and Control of Nuclear Materials) that has verified the peaceful character of each program. Unlike the NPT, the Central Asian zone obliges the member states to adopt the IAEA Additional Protocol; in the South Pacific and South Asian zones, the states parties must complement IAEA safeguards through exchanging reports and other information-sharing mechanisms. The South Pacific treaty has its own special inspection mechanism, which allows for investigation of concerns raised by a party. Thus, each region has experienced different legal arrangements that have built on the existing framework.

In this regard, the experience of EURATOM also represents an interesting precedent, which can help the Middle East escape the deadlock between the Israeli “peace first, zone second” approach and the Arab-Iranian “zone first, peace second” approach. On the issue of controls, the EURATOM-IAEA negotiations can serve as a precedent to solve future questions of global legal complexity that may arise from the creation of a future WMDFZ in the Middle East. Indeed, the EURATOM Treaty, which preceded the NPT by ten years, also created a control agency with powers to trace the circula-

tion of fissile materials within the European Community, to help new national atomic energy commissions adopt good bookkeeping practices, to inspect the use of nuclear fuels in its territory, and to report violations and decide sanctions.<sup>28</sup> In this case, regional controls created the conditions of mutual confidence that allowed initially mistrusting European nations to accept that their nuclear programs would be inspected.

The legal sovereignty of EURATOM allowed EURATOM and the IAEA to harmonize their systems of controls,<sup>29</sup> rather than subordinate one system of control to the other. EURATOM signed an agreement with the IAEA in 1973, as secured by Article 3(4) of the NPT, which allows the IAEA to negotiate with NPT signatory states “collectively” about how the IAEA verifies the NPT obligation of NNWS. In the case of Europe, all EURATOM NNWS signed the NPT in 1969 (although not France, which was an NWS), but they ratified the NPT in 1975 only after they had collectively bargained the exact terms of the IAEA-EURATOM safeguards agreement in 1973. The legal sovereignty of EURATOM thus provided an opportunity for European nations to negotiate among themselves a common position before entering into international contracts with international organizations. Since then, EURATOM has managed (and still manages) most of the routine controls and it has enhanced trust and cooperation between states and their neighbors.

This is an important lesson for those states in the Middle East that wish to engage Israel (the only non-NPT party in the region) to become a full party to the NPT and to submit all its peaceful nuclear activities to the supervision of the IAEA. If, like in EURATOM, a regional community with legal sovereignty was created first in the Middle East; if it then proved that its control agency could operate to the satisfaction of its member states (e.g., by conducting inspections in Iran); and if it would be allowed to collectively negotiate the terms of new safeguards agreements between itself, its member states, and the IAEA, it could actually become a strong force working toward the creation of a WMDFZ in the Middle East.

According to such plan, a WMDFZ with international legal sovereignty would participate in the negotiations between the IAEA and Israel over the future controls of its civilian facilities as well as of special fissionable materials previously used in the country’s military devices: the negotiation would thus be conducted collectively between the IAEA, the WMDFZ, and all member states of that new regional organization, and it would not exclude military nuclear activities from its jurisdiction. At the end of the process, all states (not just Israel and Iran) would have to sign a new trilateral safeguards agreement with both the zone and the IAEA. This collective bargaining process would give Israel time to advance toward verified denuclearization under a regional framework that could potentially convince it to ratify the NPT as an NNWS, if other security guarantees (provided by the zone) were met.

We should underline that EURATOM controls did not prohibit military uses of nuclear fissile materials, as they imposed that all uses (peaceful and military) of nuclear materials be reported to the EURATOM control agency and checked. To that end, a sophisticated verification mechanism was established to distinguish between the civilian and military activities of the NWS that were part of EURATOM—France since 1958 (the date of creation of EURATOM) and the United Kingdom since 1973 (the date of the British accession to EURATOM). Such a system, if applied to the verification mechanism of the zone, could allow the institutions of the zone to start functioning before Israel proceeds to complete verified and phased nuclear disarmament.

Finally, another important feature that comes with EURATOM's power to control and inspect nuclear activities is its power to decide on sanctions (ranging from a notification by the inspectorate to the seizing of fissile materials unduly stored by a user) in cases of verified security breaches. This power to sanction is important, as a regional agency with eyes to see security failures but no arms to repair violations would be born half dead: then, all verified violations of security rules would have to be sent to the UN Security Council (as the IAEA does), with the corresponding risks of politicization and delayed response to security breaches.

## **Conclusion**

The establishment of a zone in the Middle East is a long-term prospect. Progress toward that end will inevitably be incremental and will occur on multiple tracks. The P5+1 countries and Iran should engage in broader consultations with Iran's regional neighbors in order to facilitate the creation of a regional authority in charge of regulating nuclear development and verifying its peaceful character in the region. But all Middle East states, including Iran, should propose a clear road map to establish a regional authority in charge of negotiating acceptable trilateral safeguards agreements to be signed by themselves, the future WMDFZ's governance bodies, and the IAEA.

When formulating a road map, all states of the region should clearly express their preferences for the kind of governance structure that will have authority over the implementation of the technical functions (safeguards, planning, fuel supply, research and development) under the jurisdiction of the future WMDFZ's governance bodies. Their road map should help address both present concerns over Iran's nuclear program and future ones raised by the foreseen nuclear renaissance in the Arab world and by the possible conflicts between regional and global nuclear orders. To set up strong, sustainable, and open institutions of nuclear governance in the region, and to solve possible conflicts between national, regional, and global levels, each state should build on the experience of EURATOM as well as adapt that model to the cultural and political traditions of institution building in the Middle East.

Then, if these conditions are met, the P5+1 should multiply efforts to organize a conference on the establishment of a WMDFZ in the Middle East before 2015 to give all states the opportunity to discuss their respective road maps and find common ground. As discussed, formidable obstacles continue to hamper substantial progress to turn the WMDFZ proposal into a feasible project. However, some positive developments should not be dismissed, including the opening in the negotiations over the Iranian nuclear program. Time is not unlimited, however, and the window of opportunity opened by the 2010 NPT Review Conference's decision to convene a conference is quickly closing. Once closed, it would be extremely difficult to open again. This chance should not be wasted. 🌐

## Notes

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1. IAEA, *Nuclear Technology Review*, 22 July 2013, [www.iaea.org/Publications/Reports](http://www.iaea.org/Publications/Reports). See also C. Ebinger et al., *Models for Aspirant Civil Nuclear Energy Nations in the Middle East*, Policy Brief No. 11-01 (Washington, DC: Brookings Institution, 2011).

2. Grégoire Mallard would like to thank the generous support of the Global Governance Programme of the European University Institute and his former director, Miguel Maduro, who has funded the organization of two high-level policy seminars on a WMDFZ in the Middle East (June 2012) and on the lessons to be drawn from EURATOM (June 2013). This article, as well as the two others in the Special Section of this issue, benefited greatly from the discussions held in Florence with the seminar participants.

3. The issue of regime complexity, or global legal pluralism, has been the object of recent theorizing by political scientists and legal scholars; Eyal Benvenisti and George Downs, "The Empire's New Clothes: Political Economy and the Fragmentation of International Law," *Stanford Law Review* 60, no. 2 (2007): 595–632; Karen Alter and Sophie Meunier, "The Politics of Regime Complexity," *Perspectives on Politics* 7, no. 1 (March 2009): 13–24; Amandine Orsini, Jean-Frédéric Morin, and Oran Young, "Regime Complexes: A Buzz, a Boom, or a Boost for Global Governance?" *Global Governance* 19, no. 1 (2013): 27–39; and Grégoire Mallard, "Crafting the Nuclear Regime Complex (1950–1975): Dynamics of Harmonization of Opaque Treaty Rules," *European Journal of International Law* 25, no. 2 (August 2014): 445–472.

4. Shai Feldman and Abdullah Toukan, *Bridging the Gap: A Future Security Architecture for the Middle East* (New York: Rowman and Littlefield, 1997).

5. "Resolution of the Middle East Conference of the States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons," Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, New York, Res. 1995/32/RES/1 (11 May 1995), [www.fas.org/nuke/control/npt/text/resoluti.htm](http://www.fas.org/nuke/control/npt/text/resoluti.htm).

6. See "2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons," NPT/CONF.2010/50 (Vol. I), p. 20, Articles 7(a) and (b), [www.un.org/ga/search/view\\_doc.asp?symbol=NPT/CONF.2010/50%20\(VOL.I\)](http://www.un.org/ga/search/view_doc.asp?symbol=NPT/CONF.2010/50%20(VOL.I)).

7. See Ministry of Foreign Affairs press release 282/2012, "Helsinki Middle East Conference," 24 November 2012.

8. See "Press Statement on the 2012 Conference on the Establishment of a Middle East Zone Free of Weapons of Mass Destruction," Ministry of Foreign Affairs, Moscow, 24 November 2012.

9. See Vitoria Nuland, "2012 Conference on a Middle East Zone Free of Weapons of Mass Destruction (MEWMDFZ)" (Washington, DC: US Department of State, 23 November 2012).

10. On how this issue of legal complexity played out in past negotiations of regional and global nuclear treaties, see Grégoire Mallard, *Fallout: Nuclear Diplomacy in an Age of Global Fracture* (Chicago: University of Chicago Press, 2014).

11. On these issues, see Paolo Foradori and Martin B. Malin, *A WMD-free Zone in the Middle East: Creating the Conditions for Sustained Progress*, Discussion Paper 16, Project on Managing the Atom (Cambridge: Harvard University, 2012).

12. Avner Cohen, *The Worst-kept Secret: Israel's Bargain with the Bomb* (New York: Columbia University Press, 2010), pp. 77–78.

13. Shai Feldman, "Israel's National Security: Perceptions and Policy," in Shai Feldman and Abdullah Toukan, eds., *Bridging the Gap: A Future Security Architecture for the Middle East* (New York: Rowman and Littlefield, 1997), pp. 7–31.

14. Ariel Levite, "Never Say Never Again: Nuclear Reversal Revisited," *International Security* 27, no. 3 (2002/03): 69.

15. An important caveat exists, as reports show that the Syrian regime might have continued using some of these weapons while the disarmament process took place.

16. Michael Elleman, "The Zone Is a Win-Win for All," in Bilal Y. Saab, ed., *The 2012 Conference on a Weapons of Mass Destruction-free Zone in the Middle East: Prospects, Challenges, and Opportunities, A Special Roundtable Report* (Monterey, CA: Monterey Institute of International Studies, 2012), [http://cns.miis.edu/opapers/pdfs/120731\\_mideast\\_wmdfz\\_conf\\_roundtable.pdf](http://cns.miis.edu/opapers/pdfs/120731_mideast_wmdfz_conf_roundtable.pdf).

17. Bernd W. Kubbig and Sven-Eric Fikenscher, eds., *Arms Control and Missile Proliferation in the Middle East* (New York: Routledge, 2012).

18. Shai Feldman, *Nuclear Weapons and Arms Control in the Middle East* (Cambridge: MIT Press, 1997).

19. Cohen, *The Worst-kept Secret*. See also Or Rabinowitz, *Bargaining on Nuclear Tests: Washington and Its Cold War Deals* (Oxford: Oxford University Press, 2014).

20. IAEA, *Forum on the Experience of Other Regions in Creating WMD-free Zones*, 21–22 November 2011, [www.iaea.org/newscenter/statements/misc/2011/petersen221111.pdf](http://www.iaea.org/newscenter/statements/misc/2011/petersen221111.pdf).

21. For a balanced evaluation of the achievements of the established NWFZs, see Michael Hamel-Green, *Regional Initiatives on Nuclear- and WMD-free Zones* (Geneva: UN Institute for Disarmament Research, 2005).

22. See IAEA, *Forum on the Experience of Other Regions*, “Summary.”

23. See Grégoire Mallard, “Can the EURATOM Treaty Inspire the Middle East? The Promises of Nuclear Regional Authorities,” *Nonproliferation Review* 15, no. 3 (2008): 459–477.

24. Some authors stress differences in their democratic character and the extent to which territorial questions were salient in both contexts. Feldman and Toukan, *Bridging the Gap*. See also Rex Brynen, “The Palestinians and Confidence Building Measures in the Arab-Israeli Conflict: The Implications of Statelessness,” in Gabriel Ben Dor and David Dewitt, eds., *Confidence Building Measures in the Middle East* (Boulder: Westview, 1994), pp. 33–70.

25. Mallard, “Can the EURATOM Treaty Inspire the Middle East?”

26. Mallard, “Crafting the Nuclear Regime Complex (1950–1975).”

27. See Patricia Lewis and William C. Potter, “The Long Journey Toward a WMD-free Middle East,” Arms Control Association, 2011, [www.armscontrol.org/2011\\_09/The\\_Long\\_Journey\\_Toward\\_A\\_WMDFree\\_Middle\\_East](http://www.armscontrol.org/2011_09/The_Long_Journey_Toward_A_WMDFree_Middle_East).

28. See Mallard, *Fallout*, chap. 5.

29. Mohamed Ibrahim Shaker, *The Nuclear Non-proliferation Treaty* (New York: Oceana, 1976).