

THE NUCLEAR DIPLOMACY: FROM CONSENSUS TO ACCEPTABLE COMPROMISE

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ABSTRACT:

INSTITUTIONAL ARRANGEMENTS ARE CRUCIAL, SCAFFOLDING TOOLS BUILT ON THE FOUNDATIONS OF INTERNATIONAL LAW NPT² ESSENTIAL FOR NUCLEAR SAFETY. "A WORLD WITHOUT NUCLEAR WEAPONS", PROPOSED BY THE OBAMA ADMINISTRATION'S GOAL FOR A LONG HORIZON AND SERIOUS UNCERTAINTY, EACH STEP REQUIRED BY THE TREATY TO REDUCE NUCLEAR DANGERS. THE MAIN OBSTACLE IS THE AMBIGUOUS ATTITUDE TO THE OBLIGATIONS UNDER THE NPT, TO THE NEED FOR NUCLEAR DISARMAMENT. A SIGNAL BOOST FOR THE INSPECTION SYSTEM, EXPORT CONTROLS, STRONG ATTITUDE AGAINST VIOLATING INTERNATIONAL REGIME. INCREASING THE NUMBER OF REACTORS WILL BRING AN INCREASE OF NUCLEAR MATERIAL FOR BOMBS EVEN IF INTERNATIONAL RULES COULD RESTRICT THE DEVELOPMENT OF TECHNOLOGIES THAT OPTION HEU MEMBER IS NOT LIMITED. CONSTRAINTS AND NON-PROLIFERATION REGIME STIPULATED BY THE NPT RESTRICTIONS SHOULD BE BASED ON THE CONSENT OF THE MAJORITY OF STATES AND A STRONGER ROLE OF THE IAEA THROUGH INCREASED POWERS OF INVESTIGATION THAT CAN BE OBTAINED BASED ON ACCEPTANCE OF ALL MEMBER STATES.

KEYWORDS: INSTITUTIONAL ARRANGEMENTS, NUCLEAR DISARMAMENT, INTERNATIONAL REGIME

The achievements of the three summits security³, according to opinions should be taken over by IAEA by expanding its role in security, an opportunity denied due to the lack of a mandate from the member states in this regard.⁴ Note that there can be a clear desire to continue

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² The Nuclear Non-Proliferation Treaty – NPT. Nonproliferation, disarmament, and peaceful use – the three pillars of the Treaty on the Nonproliferation of Nuclear Weapons (NPT). The treaty isn't signed by India, Pakistan, Israel and North Korea.

³ The first nuclear security summit was held in 2010 in Washington, D.C., the second in Seoul in 2012, and the third in 2014 in The Hague.

⁴ Despite the opportunity that the end of summitry might present to the Agency to expand its nuclear security role, the IAEA Secretariat, for its part, appeared not to be seeking or preparing—at least not actively or openly—to step into the breach. IAEA Director General Yukiya Amano clearly felt that he did not have a mandate from the Agency's member states to do so. Yet at the same time Amano insisted in his Carnegie speech that the IAEA was "the global platform" for nuclear security, suggesting perhaps that it was the logical home for additional nuclear

this kind of summit, the obvious need to find some form of continuation of efforts in the field, since only managed IAEA ministerial summit on nuclear security issues (2013), which established a conference in the same year IAEA final summit (2016). It is estimated that future summits are at least unclear, unable to continue without institutionalization, personnel and funds.

Framework of the IAEA, slow in new developments of security could be strengthened by initiatives of some states.⁵ There is an agreement with safety standards, verification procedures, mechanism for increasing confidence that states are responsible for nuclear safety. A possible option could be building groups of states in good faith. A political statement in favor of international security standards as an agreement on setting up a working group to develop a strategy in this field.

IAEA safety standards and guides began to be applied and enforced as security chrestomathies series that do not have standard regime. While in the safety field, the IAEA / NEA / WANO⁶ self analysis and dissemination for security can not speak of it. Also, if in terms of safety, WANO member reactors possessing agree with peer reviews, in security just HEU and plutonium facilities have undergone peer reviews.

Between summits and IAEA, the agency has a institutional structure, continuity and responsibility to pursue the implementation of the commitments of states in its field of competence as well as other UN agencies.⁷

In 1956, the IAEA statute established jurisdiction for the nuclear and radiological material used for peaceful purposes, excluding military issues. IAEA is an agency or negotiating forum for disarmament⁸, non-proliferation efforts, however, depend on developments in the disarmament process. According to the statute, the agency can ensure the birth and amending treaties by supporting negotiations or conferences to discuss amendments being and storage of such treaties.⁹

As a UN agency, joined by 159 countries, it is responsible for nuclear global governance - check nonproliferation, nuclear safety, the use of atomic energy for peaceful

security responsibilities in the future. Trevor Findlay, *Beyond Nuclear Summitry: The Role of the IAEA in Nuclear Security Diplomacy After 2016*, Cambridge, Mass.: The Project on Managing the Atom, Belfer Center for Science and International Affairs, Harvard University, March 2014, 1.

⁵ "Friends of Nuclear Security", Expand Global Initiative focus on nuclear security.

⁶ The World Association of Nuclear Operators – WANO. WANO is an industry organization that includes the operators of all the world's nuclear power reactors among its members, provides for exchanges of information on safety incidents, lessons learned, and best safety practices, and organizes international peer reviews of safety arrangements at member reactors. See International Nuclear Safety Advisory Group (INSAG), *Strengthening the Global Nuclear Safety Regime, INSAG-21*, Vienna, International Atomic Energy Agency, 2006. http://www.iaea.org/About/Policy/GC/GC52/GC52InfDocuments/English/gc52_inf_-2_en.pdf (Accessed May 3, 2014).

⁷ Voluntary confidence-building measures (CBMs) information voluntarily submitted to the Geneva-based Implementation Support Unit by parties to the Biological Weapons Convention, The Comprehensive Nuclear Test Ban Treaty has provision for voluntary notification of large conventional explosions to the Comprehensive Nuclear Test Ban Treaty Organization.

⁸ Article VI of the Treaty on the Nonproliferation of Nuclear Weapons (NPT) legally obligates the nuclear weapons state parties to negotiate in good faith toward nuclear disarmament, and at the 2000 NPT Review Conference, they agreed that the treaty represented an "unequivocal undertaking" to "accomplish the total elimination of their nuclear arsenals." *Reinforcing the global nuclear order for peace and prosperity: The role of the IAEA to 2020 and beyond*, Report prepared by an independent Commission at the request of the Director General of the International Atomic Energy Agency, GOV/2008/22-GC(52)/INF/4, May 2008.

⁹ ARTICLE IX - Co-operation with the Security Council. The Agency shall co-operate with the Security Council by furnishing to it at its request such information and assistance as may be required in the exercise of its responsibility for the maintenance or restoration of international peace and security. See Agreement Governing the Relationship Between the United Nations and the International Atomic Energy Agency.

purposes - depending on the authorization from the member states.¹⁰ A possible extension of its responsibilities in the area of nuclear security can not ignore the agreement and Russia's non-aligned states in this regard. Option or options for the future - reducing nuclear materials and radioactive substances or / and establishing recommendations and assistance in nuclear safety - depend IAEA member states vote in the General Conference or in the front of Governing Council.

In 1970, it launched the initiative chrestomathies issuing recommendations for the physical protection of nuclear material, continually updated,¹¹ followed by the Convention in this field.¹²

In 1980, IAEA opened for signature the Convention on the Physical Protection of Nuclear Material (CPPNM). After the Cold War, it established an advisory service missions¹³ entrusted with land turned into office¹⁴ after the division, security plans and funding multi-own advisory group for nuclear safety (AdSec)¹⁵ and a committee recommendations for the nuclear safety (NSGC).¹⁶

In 2005, following the study the rules of use, storage and transport of nuclear material and after intense negotiations and conferences are offered a series of amendments to CPPNM. With the entry into force of CPPNM, IAEA will be responsible for the review conferences of the Convention.¹⁷

In 2009, in Vienna at the IAEA office, it took place the first symposium on nuclear safety to assess achievements in the field of nuclear safety from 2002-2009 on which it had been developed security plans for proposals to improve the global nuclear safety regime and the future security plan. Conclusions drawn by the chairman of the symposium are their own opinions and conclusions, not being negotiated, voted or adopted by consensus suggests that the emergence of a multilateral international nuclear security.¹⁸

In 2013 it took place the first ministerial conference on nuclear safety issue¹⁹ as an important signal for approval by the IAEA Board of Governors of the nuclear safety plan 2014-

¹⁰ Help enable a safe and secure expansion of nuclear energy; Make it possible for nuclear technologies to expand their role in the developing world; Reduce the dangers of nuclear accidents and nuclear terrorism; and Provide a path toward dramatically reduced dangers to humanity from nuclear weapons and nuclear proliferation. *Reinforcing the global nuclear order for peace and prosperity: The role of the IAEA to 2020 and beyond*, Report prepared by an independent Commission at the request of the Director General of the International Atomic Energy Agency, GOV/2008/22-GC(52)/INF/4, May 2008.

¹¹ INFCIRC/225.

¹² 1980 Convention on the Physical Protection of Nuclear Material (CPPNM). Work begins at this treaty in 1974, the improved versions being discussed by government representatives from 1978 to 1979 and in 1992 organized its results in a conference.

¹³ The International Physical Protection Advisory Service – IPPAS.

¹⁴ The Office of Nuclear Security in the Department of Nuclear Safety and Security.

¹⁵ Advisory Group on Nuclear Security – AdSec.

¹⁶ The Nuclear Security Guidance Committee (NSGC).

¹⁷ Fabrizio Nocera, *The Legal Regime of Nuclear Energy: A Comprehensive Guide to International and European Union Law*, Antwerp, 2005: Intersentia.

¹⁸ A “President’s Findings” document, An emerging multilateral nuclear security community. See *International Symposium on Nuclear Security*, March 30–April 3, 2009, Vienna, Austria, http://www-pub.iaea.org/MTCD/Meetings/PDFplus/2009/cn166/cn166_Announcement.pdf; (accessed March 5, 2014). “consider advancements and achievements in global efforts to enhance the security of nuclear and other radioactive material since 2002 and to identify areas and efforts for further improvements.” *International Symposium on Nuclear Security*, March 30–April 3, 2009, Vienna, Austria, IAEA, document IAEA-CN-166, March 2009.

¹⁹ *The International Conference on Nuclear Security: Enhancing Global Efforts*. IAEA document IAEA-CN-203, International Conference on Nuclear Security: Enhancing Global Efforts, IAEA Headquarters, Vienna, Austria, July 1–5, 2013: Announcement and Call for Papers,

2017. The record of 1300 participants from 125 countries and the works of a ministerial session followed by six sessions on topics regarding safety and 12 technical sessions it is a proof that nuclear safety is a very particularly important issue.²⁰ The conference concludes with a summary prepared by the president of it, without adopting any working plan (prepared by the Secretariat and approved by the Governing Council IAEA) regarding commitments from the states.²¹ However, one can speak of an increased level of interest and competence in nuclear safety. It is necessary to be mentioned that there were ignored in all official statements supported by nuclear security summits, intergovernmental²² relations, UN²³ initiatives and treaties that are not within its competence.²⁴ Ministerial declaration adopted by consensus, the first in the history of the IAEA, underlined the need for the IAEA to play a role in nuclear safety, lists in the areas of action in this regard.²⁵

In 2016, further expansion of the role of IAEA in the field of nuclear safety requires a process of diplomacy and it is highly sensitive.²⁶ Nuclear security treated as a challenge to global governance - the main idea of the cycle of summits - could still be at least as a careful process if not a solid construction of all states.²⁷ Opening a new diplomatic format is unproductive and taking their benefits but new responsibilities of IAEA could be a solution. Note that the representatives of the states participating in summits are represented in the IAEA Board of Governors in which they can promote their achievements.

IAEA is required to play the lead role in checking the use of nuclear technology by states without nuclear weapons for peaceful purposes only by overcoming obstacles that do not allow them to exercise oversight and undeclared sites where they could develop nuclear weapons. IAEA poor position due to insufficient funds, political games within its members, past failures spectrum, the challenges of the inability of some states issue will bring serious harm to full participation in the new global nuclear order. Perspective deprive a substantial role in non-proliferation significance in controlling the relationship between the reactors and

http://www-pub.iaea.org/MTCD/Meetings/PDFplus/2013/cn203/cn203_Announcement.pdf (accessed March 5, 2014).

²⁰ The IAEA will play a central 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. In the development area, the IAEA plays a more modest, but nevertheless important, role. "IAEA Ministerial Meeting concludes with stronger focus on nuclear security," <http://www.iaea.org/newscenter/news/2013/nsfocusconcludes.html> (accessed March 5, 2014).

²¹ President's Summary of the week's proceedings at the end of the meeting.

²² Global Initiative to Combat Nuclear Terrorism – GCINT.

²³ UN Security Council resolution 1540.

²⁴ The International Convention for the Suppression of Acts of Nuclear Terrorism - ICSANT.

²⁵ Russian Ambassador-At-Large Grigory Berdennikov make complain about the references to nuclear disarmament (inappropriate for this forum) and nuclear material for military purposes (allegedly outside the IAEA's mandate) and to emphasize that nuclear security was primarily the responsibility of states (which is actually a consensus view). Statement by the Head of Delegation of the Russian Federation Ambassador-at-large Grigory Berdennikov at the IAEA International Conference on Nuclear Security: Enhancing Global Efforts, Reservation at the Adoption of the Outcome Document, July 1, 2013, <http://www-pub.iaea.org/iaeameetings/cn203p/RussianFederation-PDF.pdf> (accessed March 5, 2014).

²⁶ Dutch Sherpa Piet de Klerk, who is charged with organizing the Hague summit, noted that "not all parts of the nuclear security summit process fit in the IAEA," but admitted that "I'm not sure where the missing dimension is." See "Securing the 2014 Summit: An Interview with Dutch Nuclear Security 'Sherpa' Piet de Klerk, *Arms Control Today*, December 2013, 18.

²⁷ The role the IAEA can be expressed by three "yes's" and three "no's": A safe and secure expansion of nuclear energy for countries that seek it; Enlarging the contribution of nuclear applications to human well-being; Substantive and rapid progress in nuclear disarmament; No nuclear proliferation; No nuclear terrorism; No nuclear accidents. *Reinforcing the global nuclear order for peace and prosperity: The role of the IAEA to 2020 and beyond*, Report prepared by an independent Commission at the request of the Director General of the International Atomic Energy Agency, GOV/2008/22-GC(52)/INF/4, May 2008.

nuclear weapons that will become worthless, blocking the institutionalization and consequently a nuclear global governance.

For countries that signed the nuclear safety regulations²⁸, the provision of information on nuclear activities are conducted under the supervision of IAEA standards, ensuring the non-proliferation requirements.²⁹ But if states have not acceded to these regulations, the situation is different; verification of certain activities do not have a well defined legal framework, being recommended at least a future Security Council resolution relating to a wide range of obligations on states including IAEA inspections and investigations.³⁰

Even if the reform of UN agencies impose serious financial restrictions, the importance of nuclear safety requires financial resources to allow inspections of nuclear safety but recruiting personnel.

It is necessary to maintain the highest level of attention, especially if an emergency occurs in nuclear safety - Security Council is empowered to intervene - which suggests the attraction Group 20 (G20) along with the focus on economic issues that may give special attention and nuclear safety.

It is being discusses the increased responsibilities of IAEA extensively to promote nuclear safety - from guide to standards, financial support, technical of program IPPAS - as the main but not the only forum.³¹

In a nonproliferation³² perspective the proposal to create a bank material necessary for its reactors under IAEA auspices, ensure an impartial mechanism to supply to everyone and saving efforts uranium enrichment facilities on their own states as well as removing the future proliferation risks that accompany these facilities.

There is a tendency to exercise control over international enrichment and reprocessing processes, both by converting existing reactors or building new ones with funding and / or multinational control so as to be eliminated sole responsibility of a single state under the material umbrella to produce nuclear weapons.³³

Non-proliferation measures are both technological and institutional. In the category of technology, future discusses about "nuclear batteries" found to be cost-optimal configuration of economic efficiency. Analysis technologies are being developed in the areas of nuclear installations particles, real-time monitoring of nuclear material circuit, finding hidden installations (centrifuge enrichment plants), continuous monitoring equipment operating circuits of reactors (the enrichment).

²⁸ the "Additional Protocol" to safeguards agreements.

²⁹ Access to an expanded set of sites, allows for short-notice inspections, and is intended to provide at least limited confidence not only that a state is not diverting nuclear material from declared nuclear facilities, but also that the state does not have secret, undeclared nuclearrelated activities.

³⁰ Pierre Goldschmidt, "IAEA Safeguards: Dealing Preventively with Non-Compliance", http://www.carnegieendowment.org/files/Goldschmidt_Dealing_Preventively_7-12-08.pdf (accessed May 15, 2014).

³¹ Findlay, Trevor. "Unleashing the Nuclear Watchdog: Strengthening and Reform of the IAEA." Policy Brief, Centre for International Governance Innovation, June 2012.

³² See Tariq Rauf and Zoryana Vovchok "12 Proposals on the Table" *IAEA Bulletin*, vol. 49, no. 2 (March 2008), pp. 62-63, <http://www.iaea.org/Publications/Magazines/Bulletin/Bull492/49204845963.pdf> (accessed May 15, 2014).

³³ See Evgeniy Velikhov, Vyacheslav Kuznetsov, and Vladimir Schmelev, "Proposal for Nuclear Power Development on the Basis of Serial Medium-Capacity NPP in Non-Proliferation Conditions," paper presented at Achieving a World Free of Nuclear Weapons: International Conference on Nuclear Disarmament, Oslo, Norway, February 2008, http://disarmament.nrpa.no/wp-content/uploads/2008/02/Paper_Kuznetsov.pdf (Accessed May 15, 2014).

Institutional arrangements are crucial, scaffolding tools built on the foundations of international law NPT³⁴ essential for nuclear safety. "A world without nuclear weapons", proposed by the Obama administration's goal for a long horizon and serious uncertainty, each step required by the Treaty to reduce nuclear dangers. The main obstacle is the ambiguous attitude to the obligations under the NPT, to the need for nuclear disarmament. A signal boost for the inspection system, export controls, strong attitude against violating international regime. Increasing the number of reactors will bring an increase of nuclear material for bombs even if international rules could restrict the development of technologies that option HEU member is not limited. Constraints and non-proliferation regime stipulated by the NPT restrictions should be based on the consent of the majority of states and a stronger role of the IAEA through increased powers of investigation that can be obtained based on acceptance of all member states.

If South Africa is a case for nuclear disarmament, North Korea is a case of acquiring nuclear weapons; although it provided programs secretly producing nuclear weapons in Iraq, Libya, Syria, Iran and North Korea, there are positive signs of proliferation observed in that countries engaged in nuclear weapons production programs and abandoned them. It is obvious that non-proliferation agreements and correlative institutions should be developed and expanded.

Security Council resolutions in support of the IAEA to conduct inspections that frame non-proliferation requirements depend on the consent of that state. The only resolution condemning North Korea for violations of nuclear safety standards and resolutions imposed sanctions for Iran's enrichment related and reprocessing which had major effects. Security Council Resolution 1540 required each member state a range of measures for export control, nuclear security deposit and any attempt to help criminalization non-state actors with nuclear, chemical and biological weapons. However, no special measures were taken for the purposes of this resolution.

In the near future, several developing countries - Egypt, Iran, Malaysia, Indonesia - will be part of the club as nuclear powers and supporters of the NPT with different visions of the five nuclear powers that nuclear will reshape the future global order.

In an inclusive consensus based on diplomacy and proper interests of the participating states in the NPT review conferences there is an opportunity to promote new rules for nuclear policies consistent non-proliferation regime.

There are discussed more extensively about certain restrictions on the principle of the NPT consensus about the legitimacy of ignoring the vote of one or more states granted by a resolution of the NPT Review Conference.³⁵ The key to a solid and coherent nonproliferation regime is to support the legitimacy of sanctioning non-compliance range as generally accepted rules.

³⁴ The Nuclear Non-Proliferation Treaty – NPT. Nonproliferation, disarmament, and peaceful use – the three pillars of the Treaty on the Nonproliferation of Nuclear Weapons (NPT). The treaty isn't signed by India, Pakistan, Israel and North Korea.

³⁵ In April 2009 speech in Prague, President Obama also emphasized the importance of enforcing nonproliferation commitments: Rules must be binding. Violations must be punished. Words must mean something. The world must stand together to prevent the spread of these weapons. Remarks by President Barack Obama, Hradcany Square, Prague, Czech Republic, April 5, 2009, http://www.whitehouse.gov/the_press_office/Remarks-By-President-Barack-Obama-In-Prague-As-Delivered/. See also, Cecilia Albin, *Justice and Fairness in International Negotiation*, Cambridge: Cambridge University Press, 2001.

IAEA has limited political and legal powers to check civil programs likely to be a prerequisite for the production of nuclear weapons by imposing standards and procedures verifiable through inspections and investigations.³⁶

The relationship between non-nuclear weapons states' interests (NNWS)³⁷ and nuclear-weapon states (NWS)³⁸ oscillates between two solutions - disarm or common collective action. The compromise solution - NPT regime and the IAEA inspections - provide theoretical premises of increasing confidence in the nonproliferation allows for criticism of unfair character of constraints on NNWS while NWS to nuclear disarmament.

From the perspective of international politics, nuclear power interests are more effective than international rules imposing international control of nuclear resources of a state cycle which it considers a threat. Also, there is a concern for two neighboring countries about nuclear danger that may be common acceptance for the solution of international control over nuclear cycle and resource constraints of national nuclear programs.

Certainty peaceful use of nuclear energy requires investment supported by the IAEA through an institutionalized under compliance and monitoring standards developed through the development of 1540 Security Council Resolution as a valuable contribution to non-proliferation and nuclear disarmament invitation NWS .

The absence of rules on the acquisition of nuclear weapons would allow the emergence of new NWS, which will ignore the NPT and will withdraw from the IAEA. Moreover, in areas that prone conflicts which states have access to the nuclear cycle, spiraling nuclear arms is more than possible.

³⁶ The former IAEA Director General El Baradei stated, "Our ability to detect possible clandestine nuclear material and activities depends on the extent to which we are given the necessary legal authority, technology, and resources. Regrettably, we face continuing major shortcomings in all three areas, which, if not addressed, could put the entire nonproliferation regime at risk." Mohamed El Baradei, "Statement to the Sixty-Fourth Regular Session of the United Nations General Assembly," November 2, 2009.

³⁷ The non-nuclear-weapons states – NNWS.

³⁸ The nuclear-weapons states – NWS.

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