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# Background Documents

ROBERT SCHUMAN CENTRE FOR ADVANCED STUDIES  
GLOBAL GOVERNANCE PROGRAMME

ASSESSING THE PROSPECT OF THE EURATOM TREATY  
APPROACH IN THE MIDDLE EAST

EURATOM TREATY AND A PROPOSAL WITH COMMENTS

## A Proposal with Comments<sup>1</sup>

*Grégoire Mallard*

Assistant Professor of Sociology  
Northwestern University  
g-mallard@northwestern.edu

In a prize-winning article I published in November 2008 in the *Nonproliferation Review* (15-3:459-477), entitled “Can the Euratom Treaty Inspire the Middle East?” I argued that the treaty which established a European Community of Atomic Energy (known as the Euratom Treaty) could provide an interesting template for states interested in creating a regional nuclear authority which would oversee the development of nuclear energy in the Middle East, albeit with some significant modifications.

The signing by Middle Eastern states of a Treaty exactly similar to the Euratom Treaty could forge the way to creating mutual trust in the region, although under limited circumstances: it would represent a significant step toward establishing mutual trust in the region *if and only if* Israel was one of the original Signatory-States. The Euratom Treaty created a regional system of controls and safeguards which checked the conformity of the declared uses of fissionable materials by Member-States and their actual uses, without prohibiting military uses. Therefore, the Euratom Treaty could serve as a template for Israel and the Arab States to agree on common inspections without Israel having to renounce the military benefits of nuclear energy. If Israel agreed to open its nuclear installations to international controls, it would be a limited yet significant step toward the normalization of Israel’s nuclear program, which Arab States should welcome. However, this first step only makes sense if it is the first of a larger process leading to the verified establishment of a Weapons of Mass Destruction Free Zone in the Middle East.

There is a second way in which the Euratom Treaty could interest Middle Eastern states. If states use the Euratom Treaty as a point of departure, and address some of its important loopholes, they could create the conditions for the sustainable and peaceful growth of nuclear power in the region without the risk of nuclear proliferation. But to do so, significant changes must be brought to the Euratom treaty. In the following pages, I give the full text of a legal template that would address some of the loopholes of the Euratom Treaty, and I explain how I have changed the text in comparison to the original Euratom Treaty. As I drafted this template, I had three main objectives in mind, not of all which have to be pursued at the same time.

The first objective: to strengthen the nonproliferation aspects of the Euratom Treaty. If it happens that Israel and Iran are not ready to enter a Community like Euratom, then, Arab States might want to improve upon the Euratom Treaty by signing a Treaty open to signature only to those States

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which commit to sign a Safeguards Agreement with the IAEA within 180 days of the entry into force of the Treaty (see article 11 of the proposed Treaty), and which recognizes that adherence to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) is a common priority (preamble). In this sense, when it is signed by Israel, this Treaty would be a first step toward the normalization of its relationship with the international community, which one hopes would lead to total nuclear disarmament and the signing of the NPT by Israel as a NNWS when the international context makes it possible for all states of the region to establish a WMD Free Zone in the Middle East.

The second related objective: to strengthen the supranational aspects of the Euratom Treaty. In the Euratom Treaty, only the system of safeguards and controls on nuclear fuels is compulsory. Unfortunately, other interesting mechanisms are optional. Two such examples are the European fuel supply agency and the legal framework of Community enterprises. In the proposed regional organization, these two mechanisms would be compulsory. These two mechanisms, if made compulsory, would mean that access to nuclear fuels *by trade* would go through a central Community Supply Agency; and that access to nuclear fuels and other fissionable materials *by production* would also be made through a central Community enterprise, like a common uranium enrichment plant and a common fuel fabrication plant. This means that both the import of nuclear fuels, as well as the front-end and back-end of the nuclear fuel cycle will be controlled jointly by the Member-States acting as part of this new Community. This means that more solidarity would be created among the member-states of the future Community than was the case with the Euratom Treaty, or than was the case of other agencies which function on an intergovernmental basis in the region, like the Arab Atomic Energy Agency (AAEA).

The third objective: to strengthen the democratic rule of law created at the supranational level by the Euratom Treaty. At the time it was signed, the Euratom Treaty included regimes of different kinds and different histories: young democracies (Italy and West Germany) and older ones (France and Belgium), as well as Republics and Monarchies. What mattered more than their inner political structure was the fact that these States agreed to act democratically with each other 1) by creating a legal framework where States could file complaints before a European Court, 2) by creating a Commission which prepared proposals for cooperation, 3) by having the Council of the Community democratically accept these proposals by majority or unanimous vote (depending on their importance), and 4) by creating a Parliament which had an advisory role. Yet, even though the political provisions represented a great leap forward at the time, since then, the practice of governance in the European Union has shown that democracy within the Union can be improved, for instance by giving more power to the Parliament of the Community. The following regional template reflects these improvements.

In the following pages, I present the draft treaty that would result from the alterations I propose here. I have also inserted comments in italics to justify some changes. Of course, this remains a purely academic exercise, but it might provide some limited source of inspiration to the diplomats and state leaders of the region who will have to carry the difficult task of negotiating their proposed solution to the problems of nuclear proliferation and nuclear security in the Middle East.

## **Treaty Establishing a Community of Atomic Energy in the Middle East**

Signed by the:

*[In this Draft Treaty, I assumed for pedagogical purposes that six (and not five or seven) States signed this Treaty, to underline the parallel with the Euratom Treaty, initially signed by six States (and now by 27 States). The following draft treaty could work as a template for more, or less, and different Signatory-States.]*

## **PREAMBLE**

- Recognizing that the development of nuclear energy is a political decision that engages the future of all the States of the region

*[This is a fundamental principle, which calls for the creation of political institutions to represent the will of Heads of States (through the Council of the Community) and Peoples (through the Parliament of the Community). The articles on the political institutions derive from it.]*

- Recognizing that adherence to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) is key to ensure the long-term peace and security of the region, and that new multilateral initiatives shall pursue the goals of avoiding nuclear proliferation and acting toward nuclear disarmament

*[As the Euratom Treaty was signed ten years before the NPT, no mention was made to it. Israel could sign a Treaty with such a preamble even if without having normalized yet its relationship with regard to the NPT]*

- Recognizing that the countries of the region shall develop sources of energy other than fossil fuels in order to bring long-term prosperity to their peoples and to ensure the long-term sustainability of their common environment
- Recognizing that peoples of all nations have an inalienable right to benefit from a secure supply of source materials and fissionable materials to fuel their present and future electricity-producing power plants
- Recognizing that such access to source and fissionable materials, either by trade or production, is better achieved by collective means rather than by unilateral and purely national means
- Recognizing that concrete steps are needed to establish a Weapons of Mass Destruction Free Zone in the Middle East and that one of the most important steps toward that goal consists in convincing all countries of the region to seek collective solutions to solve present and future problems of access to and protection of fissile materials

*[This is also a great departure from the Euratom Treaty, which was proposed partly to oppose the creation of a Nuclear Weapons Free Zone in Central Europe (known as the "Rapacki Plan"). If Israel signs this Treaty, it would then prove Israel's commitment to nuclear disarmament, even if postponed to a later date]*

The Signatory-States of this treaty agree to establish the following institutions created by this Treaty:

## **INSTITUTIONS OF THE COMMUNITY**

### **Functions of the Community**

- 1- The Community shall be a legal person which shall have exclusive ownership on all the source materials and fissionable materials circulating in the territory of the Community
- 2- The Community shall ensure collective access to source materials and fissionable materials to all the Member-States of the Community as long as Member-States comply with the spirit and letter of this Treaty

- 3- The Community shall provide access to source materials and fissionable materials in a prompt manner, and at the most competitive price on the market, to all of its Member-States and to all persons and private firms which are located on the soil of its Member-States, whether they are controlled by nationals of the Community or by foreign persons or firms
- 4- The Community shall ensure that all the source materials and fissionable materials circulating among its Member-States are used for peaceful purposes as registered by persons, firms or Member-States with the Fuel Supply Agency of the Community
- 5- The Community shall remain in effective control, at all times, of the uranium enrichment, fuel fabrication and spent fuel reprocessing plants built on the territories of its Member-States and/or those built anywhere which are under their control. The Community shall retain at all times the absolute majority of their control rights and property rights of these uranium enrichment, fuel fabrication and spent fuel reprocessing plants, even as the ownership and management structures of these plants might be open to the minority participation of foreign nationals
- 6- The Community shall ensure that none of the legal persons and Member-States in the territories of its Member-States shall erect a uranium enrichment, fuel fabrication or spent fuel reprocessing plant on a purely national basis, either on its territory or elsewhere; or that one of its Member-State shall appropriate, either by forceful or persuasive means, a uranium enrichment, fuel fabrication or spent fuel reprocessing plant previously co-owned and co-developed by the Community

*[This is another departure from the Euratom Treaty, which did not impose a compulsory control and ownership of uranium enrichment, fuel fabrication and spent fuel reprocessing plants by the Community. The Euratom Treaty just created the possibility for the Community to control them, and as a result of this non-compulsory character, Member-States avoided the Euratom Treaty]*

- 7- The Community shall establish safety standards which will ensure the protection of the health of the workers and populations exposed to the source materials and fissionable materials circulating in the Community as well as the protection of the natural environment in which these source materials and fissionable materials are to be used and stocked before and after being spent
- 8- To accomplish its functions, the Community has created a Commission, Parliament, Council and Court of Justice, which share the authority to propose, discuss and decide the future plans of the Community regarding collective access to source and fissionable materials, as well as to litigate disagreements regarding the proper implementation of the policies adopted by the Community
- 9- The political institutions of the Community are all located in *[for instance Amman (Jordan)]* and *[for instance the Hashemite Kingdom of Jordan]* has generously given the lands and buildings that will permanently host the institutions of the Community and which will become the first territories of the Community

### **Composition of the Community**

- 10- The signature of this Treaty is open to all States of the region and all Member-States of the Arab League

- 11- When entering the Community, each Member-State of this Treaty must commit to sign a Safeguards Agreement with the IAEA within 180 days of its entry into force if it has not done so before; or if it has already signed a Safeguards Agreement, it commits to sign a new tripartite Safeguards Agreement between itself, the IAEA, and the Community created by this Treaty within 180 days of its entry into force

*[This article allows Israel to enter into the Community while remaining outside the NPT framework: if it signs this Treaty, Israel would not only commit to accept this Community's controls but also to sign an Agreement either based on the Agreement signed by India with the IAEA, or based on common IAEA agreements signed with NPT NNWS – with the difference that that it would be an Agreement between Israel, the IAEA and the present Community, which shall own and operate what were Israel's uranium enrichment and reprocessing plants]*

- 12- When entering the Community, each Member-State of the Community shall repeat its commitment not to use the source materials and fissionable materials produced or bought by the Community for military purposes

- 13- All candidates for accession, which shall own or operate on a national basis a uranium enrichment, fuel fabrication or spent fuel reprocessing plant at the time of their bid for accession to the Community, shall reconfigure their plants under IAEA supervision to ensure their peaceful purposes, and they shall pledge to comply with the treaty by granting to the Community the property rights and control rights over their uranium enrichment, fuel fabrication and spent fuel reprocessing plants in exchange for a fair compensation

*[Articles 12 and 13 mean that after the entry into force of that Treaty, if Israel is party to it, the Israeli plants will fall under the control of the Community, which will no longer use these facilities for military purposes. These articles do not say whether and when Israel's existing nuclear warheads should be eliminated]*

- 14- The first Signatory-States of this treaty shall invite other States of the region to either apply for membership in the Community, or to form treaties of association with the Community to the extent that they are willing to open the ownership structure of their uranium enrichment, fuel fabrication and spent fuel reprocessing plants to participation of the Community

*[In case Israel or Iran do not sign this Treaty, this article creates a legal obligation for future Member-States to start negotiating immediately with Israel and Iran on a roadmap toward association, or toward full membership. This legal obligation departs from the treaties establishing other international organizations in the Arab world, like the Arab Atomic Energy Agency, which does not seek to include all States in the region]*

- 15- This Treaty shall be concluded for an unlimited period

## **THE COMMISSION OF THE COMMUNITY**

The treaty creates a Commission of the Community

### **Composition of the Commission**

- 16- The Commission is composed of [six] Commissioners, who after having been designated by the Heads of States, have been confirmed by a vote of the Parliament

*[Here, the number Six derives from the arbitrary assumption that six States would first sign this treaty. The number of Commissioners will vary as the Community will expand its functions and composition]*

- 17- Within two weeks of the installation of the new Parliament, each Head of State will designate at least one nominee, who must be a national of its State, for candidacy to the posts of Commissioners
- 18- The Parliament shall approve and reject the nomination of each Commissioner within three weeks of receiving his or her nomination by the Head of State
- 19- Each nominee who gathers more than the qualified majority of two-thirds of the votes of the Parliament is approved and becomes Commissioner for a five year term, renewable twice
- 20- In case the designation of a nominee for the post of Commissioner is not approved by the qualified majority of the Parliament, the procedure shall be repeated until the concerned Head of State can find a nominee who receives the approval of the Parliament.
- 21- After all the Commissioners are elected, the Parliament shall gather for an extraordinary session and shall proceed to elect the President of the Commission, using a two-round system *[These last four articles also depart from the Euratom Treaty, which initially did not include the Parliament in the election of the Commission. This series of articles build upon the latest developments in EU law, and particularly on the Constitutional Treaty. These articles create a tighter system of democratic control over the working of the Commission than what is found in the Euratom Treaty]*
- 22- Within one week of the election of the new President of the Commission, the new Commission shall be installed in place of the former Commission, and the Commissioners shall take an oath before the President of the Court of Justice to act in total independence from the government of their Member-States and for the higher good of the Community
- 23- The number of Commissioners shall originally be equal to the number of Member-States. That number shall be reformed by the Council acting unanimously either when the time of renewing the past Commission has come, or when new Member-States or new functions are added to the Community

### **Functions of the Commission of the Community**

- 24- The Commission shall prepare the policies which shall ensure access to source materials and fissionable materials to all the Member-States of the Community, and it shall regularly submit its proposals to the review of the Parliament before final approval by the Council of the Community
- 25- The Commission shall execute the policy of the Community as decided by the Council of the Community
- 26- The Commission shall draw for each financial year a budget showing all revenue and projected expenditure of the Community and it shall ask the Council to appropriate the necessary funds to operate for the planned budget
  - The Commission shall collect the estimates of the administrative expenditures drawn up by each institution of the Community as well as all the projected costs of all fuel supply contracts commensurate to the needs of all persons, firms and Member-States located in the Member-States of the Community regarding their projected use of nuclear fuels and fissile materials for the operating year

- The Commission shall place the preliminary draft budgets before the Council no later than September 30 of the year preceding that in which these budgets are to be implemented
  - The expenditure shown in the operating budget shall include in particular: administrative expenditures; expenditures related to safeguards and to health and safety; expenditures related to the construction of Community uranium enrichment, fuel fabrication or spent fuel reprocessing plants; expenditures related to the projected purchase of nuclear fuels and other fissile materials outside the Community by the Fuel Supply Agency
  - The Commission shall consult the institutions of the Community, may the Council find appropriate to depart from the preliminary budgets, and it shall ensure that all modifications made to the first estimates are collected before October 15
  - The Council shall, acting by a qualified majority of two thirds, establish the draft budgets and forward it to the Parliament no later than October 31
  - The Commission shall ask the Council to appropriate a sum equivalent to one twelfth of the budget appropriations for the preceding year should the Parliament have failed to adopt the operating budget placed before it by the end of the financial year
  - The financial year shall run from January 1 to December 31
- 27- The Commission shall draw a plan to appropriate funds directly thanks to tariffs and levies on the import of materials and products used in the nuclear field. Within two years after the entry into force of the Treaty, the Commission shall present to the Parliament and Council proposals to ensure the long-term financial autonomy of the Community

*[This article departs from the Euratom Treaty, which unlike the European Coal and Steel Community Treaty, did not allow the Commission to seek financial autonomy from member-States]*

- 28- The Commission shall submit to the Court of Justice of the Community any complaints against a Member-State, by a person, firm or another Member-State regarding the implementation of the decisions taken by the Council or regarding the implementation of the Treaty, if the Commission fails to hear the dispute within three months, or if the decision reached by the Commission within a delay of three months is contested by one of the parties
- 29- Upon a petition by a non-Member-State to accede to the Community, the Commission shall start preliminary talks with the candidate and submit within one year from the formal request of accession a positive or negative evaluation on the candidacy.
- The Council shall unanimously vote in favor of further examination of the candidacy before the Commission shall engage in further negotiations that must lead to a final report prepared by the Commission within a period of three years after the first preliminary vote
  - After completing its final report, the Commission shall submit acceptance of the candidacy to a final vote by the Council, acting unanimously.

#### *FUEL SUPPLY GUARANTEES*

- 30- The Commission shall defend the interests of the Community abroad and it shall have an exclusive right to contract with foreign exporters of source materials and fissionable materials on behalf of the Community and to that end, it shall set up a Fuel Supply Agency, whose director will be nominated by the President of the Commission, after a majority vote of the Commission
- 31- The Commission shall contract with foreign producers of source materials and fissionable materials to procure these materials for the persons, firms or Member-States of the Community which shall need them. It shall, within the limits of its powers and jurisdiction, conclude agreements or contracts with third State-parties, international organization, a

national or a private company of a third State-party. When doing so, it shall sign contracts on behalf of the Community, which has international legal personality

- 32- The Commission shall respect the unlimited right by Member-States, persons or firms to use and consume source materials and fissionable materials which have been properly come into their possession, subject to the terms of this treaty, and the NPT
- 33- The Commission shall ensure that all users in the Community receive a regular and equitable supply of source materials and fissionable materials which allow them to conduct peaceful research and industrial activities
- 34- The Fuel Supply Agency shall become the central market place where foreign supply and domestic demand of source materials and fissionable materials meet. While all fuel supply contracts shall be formally signed by the Commission on behalf of the Community, the Fuel Supply Agency shall be responsible to negotiate all the contracts for the domestic users of imported source materials and fissionable materials

*[This is also an important difference with the Euratom Treaty, which only created the possibility for its Signatory-States to use the mediation of the European Supply Agency, but did not make this mediation compulsory. Hence, Member-States like France or West Germany often bypassed its mediation]*

- 35- Potential domestic users of source materials and fissionable materials shall periodically inform the Fuel Supply Agency of the source materials and fissionable materials they require, specifying the quantities, the physical and chemical nature, the place of origin, the intended use, delivery dates and price terms, which are to form the terms and conditions of the supply contract which they wish to conclude.
- 36- The Fuel Supply Agency shall inform all potential users of the offers and of the volume of applications which it has received and shall call upon them to place their orders by a specified time limit; when it has received all such orders, it shall make known the terms on which it can meet them, and agency rules which will require the approval of the Commission and Council shall determine how the demand is to be balanced against supply
- 37- The Commission shall require that any excess of source materials and fissionable materials recovered or obtained as by-products and not actually being used or ready for use shall be deposited with the Fuel Supply Agency where it can be supervised by the Commission. In case of unanticipated and urgent needs by a Member-States (for instance, if a nuclear exporter of fuels fails to deliver the expected materials), the Fuel Supply Agency might deliver these excess fuels to the concerned Member-State
- 38- Within two years of the entry into force of the treaty, the Commission shall prepare a plan to regulate the management of spent fuels within the Community  
*[These last two articles also depart from the Euratom Treaty, which does not give jurisdiction to its institutions on the management of spent fuel and other materials used for instance by France for military purposes]*
- 39- Every Member-State or a person or firm located on the territory of the Member-States of the Community which has signed a contract of fuel procurement with non-Member-States or foreign companies previous to the entry into force of this Treaty, shall inform the Fuel Supply Agency of the existence of the contract. It shall let the Fuel Supply Agency renegotiate a new contract of fuel procurement with the concerned foreign nuclear exporter of fissile materials

- The Fuel Supply Agency shall ensure that the new 'inherited' contract ensures the same rights and obligations as in the previous agreement.
- The new contract, which, on the side of the Community, will be now assumed by the Community rather than by the Member-State, shall just extend the same conditions that would have existed if the Community had not been created. For the remaining length covered, the prices and quantities of fissile materials bought by the Member-State shall be equal to those specified in the previous contract
- In case foreign supplier takes the opportunity of the nominal change in the fuel procurement contract due to the creation of the Community and if it refuses to offer as advantageous terms as in the previous contract, the Fuel Supply Agency shall have the right to consider the preexisting contract null. Then, the Fuel Supply Agency will have the duty to find a new supplier offering terms as advantageous to the Member-State, person or firm, as the previous one. The Commission, acting on behalf of the Community, shall have the duty to seek compensation from the foreign supplier before an adequate court.

*[This article also departs from the Euratom Treaty, which left to its member-States the possibility to wait until the expiration of existing fuel supply contracts between future member-States and third parties before the Supply Agency could be called to renegotiate new contracts after their expiration; in most cases, after their expiration, new binational contracts were signed by member-States with third parties, rather than contracts between the Supply Agency and third parties]*

- 40- Within one year, the Fuel Supply Agency shall ensure that all Member-States have abolished all restrictions and customs on trade of fissile materials among themselves, and the Fuel Supply Agency shall help the Commission define a common customs and common tariffs policies, which the Commission will present to the Council of Ministers within two years of the entry into force of the Treaty

#### URANIUM ENRICHMENT, FUEL FABRICATION AND SPENT FUEL REPROCESSING PLANTS

*[The following articles establish the jurisdiction of the Community over the two most sensitive moments in the nuclear fuel cycle: the construction of new uranium enrichment and reprocessing plants. Here, I added the management of fuel fabrication plants, which would make sense if the Community built or inherited uranium enrichment plants with the purpose of fabricating fuels. These articles do not concern other plants, like desalination plants, or nuclear power plants, which Member-States of this Community can build or buy on their own or jointly, outside this Treaty framework. Therefore, and as far as other regional agencies like the Arab Atomic Energy Agency do not have existing plans to construct common uranium enrichment, fuel fabrication and spent fuel reprocessing plants, the jurisdiction of this Community does not compete with that of other existing agencies (only with that of Israel and Iran, which have built such plants, and which would need to give them away to this Community to become its Member-States)]*

- 41- The Commission shall ensure that any Member-State or any firm located in the territory of a Member-State planning to set up a uranium enrichment, fuel fabrication or spent fuel reprocessing plant in the territory of the Member-States or elsewhere shall declare to the Commission the technical characteristics of the projected installation, and that it shall submit a proposal of joint-development with the Community whose feasibility and desirability will be evaluated by the Commission of the Community

*[It is a middle-of-the-road principle between total prohibition of uranium enrichment, fuel fabrication and spent fuel reprocessing plants in the Middle East (an Enrichment and Reprocessing Free Zone) and total laissez-faire. The prohibitionist position, even if applied to themselves by States like Jordan, would create too many problems for Israel or Iran to contemplate the possibility to adhere one day to this Community.]*

42- After receiving a proposal to create a uranium enrichment, fuel fabrication or spent fuel reprocessing plant by one Member-State or more, the Commission shall prepare within a deadline of six months an assessment of the economic and environmental impact of the projected uranium enrichment, fuel fabrication or spent fuel reprocessing plant, and it shall transmit its assessment and its evaluation of the projected facility to the Parliament

43- After the Commission has given its evaluation of the projected plant, the Parliament shall have a period of four months to propose changes to the proposal, after which the Commission shall incorporate these changes in the proposal, and send it to the Council for a vote [*by a qualified majority of two thirds*]

- In case of a first negative evaluation by the Commission of the projected uranium enrichment, fuel fabrication or spent fuel reprocessing plant, the Commission shall take two months to consider the changes brought to the proposal by the Parliament, and take into consideration the proposed changes by the concerned Member-States before issuing a second evaluation to the Council

*[It remains to be negotiated whether the construction of new uranium enrichment or plutonium reprocessing facilities in the Community will be voted by the Council by a simple or qualified majority or by unanimity]*

44- If the Council votes in favor of the proposal, the Commission shall proceed to prepare the proper legal contracts which shall ensure that the Community is granted the absolute majority of the control and property rights of the enterprise, in the eventuality of a participation of foreign nations in the construction of a uranium enrichment, fuel fabrication or spent fuel reprocessing plant. The Community shall own more than 50% of the shares at all times, while leaving open the possibility that non-Member-States would participate in the construction of the uranium enrichment, fuel fabrication or spent fuel reprocessing plant

45- In case of a positive vote by the Council, the Commission shall, after ensuring that proper controls in association with the control agency of the Community and the IAEA are planned before authorizing the construction of the plant, require all Member-States to take the necessary measures in order to facilitate the conclusion of insurance contracts covering nuclear risks, nominate the managers in charge of the management of the plant and prepare the legal contracts to hire managers and workers

*[These last five articles depart from the Euratom Treaty, which leaves the option to its member-States to use the Euratom Treaty to develop enrichment and reprocessing plants. Here, this is made compulsory, and a procedure is defined, which includes a concern for the environment]*

46- In case of a positive vote by the Council, the Commission shall prepare a proposal to directly raise taxes on the import of nuclear materials which will allow the Commission to fund part of the projected costs of that uranium enrichment, fuel fabrication or spent fuel reprocessing plant on an autonomous basis. The proposal shall establish the foundations of a common customs tariff. The Commission shall submit its proposal, previously reviewed by the Parliament, to the unanimous vote of the Council

*[Similar to article 27, this article makes it explicit that the funding of common project can be funded by taxes]*

47- The Commission shall ensure that within one year of the entry into force of the Treaty, Member-States shall have abolished all restrictions based on nationality affecting the right of nationals of any Member-State to take skilled employment in the field of uranium enrichment,

fuel fabrication or spent fuel reprocessing, subject to the limitations resulting from the basic requirements of public security and public health

- 48- The Commission shall petition all the non-member States of the region, which presently own or operate uranium enrichment, fuel fabrication and spent fuel reprocessing plants, to open their ownership and managements structures to the participation of the Community, to an extent to be agreed upon by both parties

#### *CONTROLS AND SAFEGUARDS*

- 49- The Commission shall ensure that source and fissionable materials circulating in the Community are not used for purposes other than those which are declared by the Member-States, private firms and other operators which use the source materials and fissionable materials in the territory of the Community. To that end, it shall set up a Control Agency, whose director will be nominated by the President of the Commission, after a majority vote of the Commission

*[The moment when source materials will be safeguarded (for instance, after they are mined) will need to be determined precisely during this Treaty negotiations, and revisions might be decided by the Commission]*

- 50- The Commission shall ensure that the Control Agency is properly funded and that it works according to proper guidelines.

- Should an organization, regional or global, devoted to the control of “highly sensitive fissionable materials,” be created within the context of the signature of a treaty Establishing the Nuclear Free Zone in the Middle East, or a Fissile Materials Cut-Off Treaty, “highly sensitive fissionable materials,” as defined in the appendix and circulating in the Community will be administered, separately by such a future organization and or jointly with the Control Agency created by this treaty

- 51- The Commission shall require that operating records of electricity-producing plants and other research laboratories where source materials and fissionable materials are used be kept and showed to the Commission to permit accounting of materials used or produced. The same requirement shall apply in the case of the transport of source and fissionable materials

- 52- In case the Control Agency observes any suspect loss of source materials and fissionable materials in the accounting reports, the Director of the Control Agency shall immediately send inspectors on site to report on the causes of that loss, and in case the inspectors confirm suspicions of diversion, either voluntary, or involuntary, the Director of the Control Agency shall inform both the President of the Commission and the President of the IAEA of suspect activities

*[This article also departs from the Euratom Treaty, as it mentions the complementarities between IAEA controls and the system of safeguards of the Community]*

- 53- The Commission shall recruit inspectors of the Control Agency and it shall send inspectors in the territories of its Member-States without advanced notification to the State or private firm in question. On presentation of a document establishing their authority, inspectors shall at all times have access to all places and data and to all persons who deal with fissile materials, and nuclear fuels, equipment or installations subject to the safeguards of the Control Agency

- 54- If the carrying out of an inspection is opposed, the Commission shall request from the President of the Court of Justice an order to ensure that the inspection be carried out

compulsorily, and the President of the Court of Justice shall give a decision within 48 hours; and in case there is a danger in delay, the Commission may itself issue a written order to proceed with the inspection, without awaiting the decision of the President of the Court of Justice

- 55- In the case the inspections are still opposed after an order from the Court of Justice is confirmed, the Commission may impose the following sanctions:
- a warning
  - the withdrawal of special benefits such as financial or technical assistance
  - the placing of the suspect activity for a period not exceeding four months under the administration of a person or board appointed by joint agreement by the Commission and the Member-States in which the activity is carried out
  - total or partial removal of the source materials and fissionable materials in the site where suspect activity is carried out. To carry such a sanction, the Commission shall exercise the property right that the Community holds on all source materials and fissionable materials circulating in the territory. This property right means that the Commission can take possession of the fissile materials used by a person, firm, or Member-State, suspected of undeclared or illegal activities by the Control Agency. In that case, the source materials and fissionable materials will be deposited in the Fuel Supply Agency

- 56- The Commission shall send an annual report on the activities of inspection and control of the Control Agency to the Parliament. The Commission shall also monitor the progress of the Control Agency to conform to the up-to-date procedures regarding the protection of populations in case of misuse or malfunction of the plants operating with the source materials and fissionable materials provided by the Community. It shall send progress of reports to the Parliament

## **THE PARLIAMENT OF THE COMMUNITY**

The Treaty creates a Parliament of the Community

### **Composition of the Parliament of the Community**

- 57- The Parliament shall consist of delegates who shall be designated from the respective Parliaments of the Member-States in accordance with the procedure laid down by each Member-State
- 58- Members of the Parliament of the Community shall be members of the national assemblies of their Member-State at the time when they are elected to the Parliament of the Community. *[They shall be either for instance: Members of the People's Assembly or Shura Council of Egypt, of the Consultative Assembly of Saudi Arabia, of the Chamber of Deputies or the House of Senators of Jordan, etc.]*
- 59- Members of the Parliament of the Community are designated for a period of five years, renewable twice
- 60- Members of the Parliament of the Community shall remain parliamentarians in their home nation for the entire length of their tenure at the Parliament of the Community. They do not have to quit their previous post in order to become representatives of the Community

61- Members of the Parliament of the Community are not to lose their seat in the Parliament of the Community should they lose their seat during national elections organized when they sit in the Parliament of the Community.

62- Each country is allotted the following number of seats in the Parliament of the Community:  
*[The distribution of seats will be one of the most delicate issues to negotiate between founding Member-States. The distribution shall pay attention to the size of the country in terms of population, but it shall be weight not to create too big an imbalance in Parliament between small and big States.]*

63- The Parliament shall adopt its rules of procedure acting by a majority of two thirds

64- After its members are designated for a new period of five years, the Parliament shall elect a President of the Parliament during its first session by a two-round system of election. The President of the Parliament shall then nominate the Chairmen of the supervisory panels of the Parliament, advising the Commission and Council on fuel supply policy and common tariffs, the planning of future uranium enrichment, fuel fabrication and spent fuel reprocessing plants, and the update of control procedures, as well as on future plans of enlargement

65- The Parliament shall draw up proposals for elections by direct universal suffrage in accordance with a uniform procedure in all Member-States, for the time when the Community may extend its powers to other fields that presently concerned by this Treaty

### **Function of the Parliament of the Community**

66- The Parliament, which shall consist of representatives of the peoples of the States brought together in the Community, shall exercise the advisory and supervisory powers which are conferred upon it by this Treaty

67- The Parliament shall review the nomination of the Commissioners by their respective heads of States and it shall approve their final nomination by a majority of two thirds of members of Parliament, with a quorum of two thirds of the full Parliament. The Parliament shall vote to elect a President of the Commission, using a two-round system

68- The Parliament shall give an advisory opinion on all the policy proposals prepared by the Commission before the proposals are to be presented to the Council of Ministers for a vote  
- The Parliament shall submit amendments to the policy proposals presented. When these amendments are endorsed by a simple majority of members of parliament, the amendments are included in the written proposals presented before the Council

The Parliament shall prepare within three years a proposal of enlargement of the jurisdiction of the Community to other fields that appear critical to the long-term prosperity and security of the peoples of the region and to the preservation of its ecological resources

*[These last four articles depart from the Euratom Treaty, as they give more power to the Parliament in monitoring the legislative process. The last article also mentions the goal of environmental protection and the need to balance the production of energy with various sources]*

### **THE COUNCIL OF THE COMMUNITY**

The treaty creates a Council of the Community.

### **Composition of the Council of the Community**

- 69- The Council shall be composed of Heads of States of the Member-States of the Community. In case Heads of States could not be present at the time of the meeting, should the decisions need to be taken by simple or qualified majority, Heads of States can be represented by their Ministers of Foreign Affairs

*[This is an important addition to the Euratom Treaty, which creates a Council of Ministers, and not a Council of Heads of States. Considering the importance of decisions taken by the Council, Heads of States seem to be the legitimate authorities]*

### **Functions of the Council of the Community**

- 70- The Council shall take all legislative decisions concerning the general policy of the Community, and it shall promptly examine any policy proposals presented by the Commission and properly amended by the Parliament
- 71- The Council shall, acting by qualified majority voting of two thirds on the proposed yearly budget prepared by the Commission, reviewed by itself and adopted by the Parliament, make financial regulations specifying the procedure to be adopted for establishing and implementing the budgets and for presenting and auditing accounts. It shall determine the methods and procedure whereby the contributions of Member-States shall be made available to the Commission
- 72- When the Council shall take all decisions concerning the present activities of the Community by a qualified majority of two thirds of the votes, the votes of its members are to be weighted as follows:  
*[For instance, the weights can be the following: for Big States, between 6 and 9; for Middle-Sized States, between 3 and 6, and for Small States, between 1 and 3]*
- 73- For the first financial year after the entry into force of this Treaty, the operating budget revenue shall include financial contributions of Member-States on the following scale:  
*[For instance, the scale can be the following: for Big States, between 6 and 9; for Middle-Sized States, between 3 and 6, and for Small States, between 1 and 3]*
- 74- The Council shall, acting by a simple majority, determine the salaries, allowances and pensions of the President and members of the Commission and of the members of Parliament and Judges, Advocates General and Registrar of the Court of Justice
- 75- The Council shall take all decisions on future changes concerning the functions and the membership of the Community by unanimous vote:
- The Council shall take all decisions affecting the extension of functions of the Community by a unanimous vote, especially the decisions concerning the extension of the jurisdiction of the Community to adjacent fields in the energy sector or in other fields
  - The Council shall take all decisions affecting the composition of the Community by a unanimous vote, especially the decisions concerning the admission of new Member-States
- 76- The Council shall encourage the Commission to pursue an active policy of association or enlargement of the Community with non-Member-States of the region by signing a Treaty of Association
- The Council shall ask annual reports on the progress made by the Commission in investigating the possibility that the Community may buy minority shares in the ownership and control of uranium enrichment, fuel fabrication and spent fuel reprocessing plants of non-Member-

States, in the region and abroad; or that the Community may buy majority shares in the ownership and control rights of uranium enrichment, fuel fabrication and spent fuel reprocessing plants of non-Member-States in the region which are formally engaged in a process of accession into the Community

*[This is an important addition to the Euratom Treaty: it shows that the Council is responsible for checking the legal obligation that the Commission has to prepare Treaties of Association]*

## **THE COURT OF JUSTICE OF THE COMMUNITY**

The Treaty creates a Court of Justice

### **Composition of the Court of Justice of the Community**

77- The Court is composed of [*seven*] judges elected by a unanimous vote of the Council for a period of four years renewable twice. Every two years, there shall be a partial replacement of the Judges, with respectively, [*four*] judges, and [*three*] judges, being replaced alternatively [*the number of Judges will vary as the Community will expand its functions and composition*]

78- The Court shall be assisted by two Advocates-General, or any reasonable number that the Court shall believe is adequate. The Advocates-General, acting with complete impartiality and independence, shall make, in open court, reasoned submissions on cases brought before the Court

79- The Judges and Advocates-General shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognized competence. They may not hold any political or administrative office and they may not engage in any occupation, whether compensated or not, unless exemption has been exceptionally granted by the Council. Before taking their duties, the Judges have to take an oath, in open court, to perform their duties impartially and conscientiously on behalf of the Community and to preserve the secrecy of the deliberations of the Court

80- The Court shall appoint its Registrar and lay down the rules governing its services

81- The number of Judges shall originally be equal to the number of Member-States. That number shall be reformed by the Council acting unanimously either when the time of renewing the past Commission has come, or when new Member-States or new functions are added to the Community

### **Functions of the Court of the Community**

82- The Court shall ensure that in the interpretation and application of this Treaty, every member of the Community shall conform to its laws

83- The Court shall hear the complaint by a Member-State, a private person or firm, or an institution of the Community against the alleged failure by another Member-State to fulfill its obligations under the treaty, after the former complaint has been previously heard by the Commission and when the intermediation of the Commission has not succeeded in solving the dispute within a delay of three months after the case was first brought to the attention of the Commission

- Before the Court shall hear the dispute, all parties to the dispute and the Commission shall deliver a reasoned opinion on the case
- 84- The Court shall advise the Commission, upon request by the Parliament or by the Council, on the legality of a proposed legislation crafted by the Commission, which shall be presented either before the Parliament or before the Council. It shall have exclusive jurisdiction to give preliminary rulings on:
- the interpretation of this Treaty
  - the validity and interpretation of legislative acts of the Council
  - the interpretation of the statutes of bodies established by an act of the Council or a regulation of the Commission
- 85- The Court shall review the legality of the acts of the Council and of the decisions and regulations of the Commission, other than recommendations and opinions
- It shall have jurisdiction to judge any action brought by a Member-State, a private person or firm, or another institution of the Community against these acts on grounds of lack of competence, infringement of this Treaty or of any rule of law relating to its application or misuse of power
  - It shall also have jurisdiction to judge any action brought by a legal person or private firm, which may institute proceedings against a decision by the Commission, which is addressed to that person or which is addressed to another person but of direct concern to that person or firm
  - In each of the cases, if the action is well founded, the Court of Justice shall declare the act of the Council or the regulation of the Commission to be void. In the case of the regulation, however, the Court shall state which of the effects of the regulation which it has declared void and the Commission or Council shall act upon it
- 86- The Court shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by or on behalf of the Community, whether that contract be governed by public or private law
- 87- The judgments of the Court shall be enforceable by the rules of civil procedure in force in the State in the territory of which it is carried out

## **ENTRY INTO FORCE**

- 88- This Treaty shall be ratified by the High Contracting Parties in accordance with their respective constitutional requirements. The instruments of ratification shall be deposited with the Government of the [for instance, the Arab Republic of Egypt]. This Treaty shall enter into force on the first day of the month following the deposit of the instrument of ratification by the last signatory State.

## **TREATIES OF ASSOCIATION WITH THE COMMUNITY**

- 89- Non-Signatory States of this Treaty can petition the Community to be associated with the operation of its functions outside the Community. In particular, non-Signatory States can be associated with the Community in two different ways
- by submitting their source and fissionable materials to the control and safeguards of the Community
  - by opening the ownership structure of their uranium enrichment, fuel fabrication or spent fuel reprocessing plant to the Community. Each time the Community co-owns part of a uranium enrichment, fuel fabrication or spent fuel reprocessing plant outside the territory of its

member-State, the controls and safeguards of the Community will be applied to this uranium enrichment, fuel fabrication or spent fuel reprocessing plant

*[This is an important article. The first possibility (extension of safeguards outside the Community) means that Israel could subject its nuclear activities to the control and safeguards of the Commission of the Community, without initially becoming a Member-State of that Community. The second possibility means that Israel or Iran could partially open the ownership structure of its uranium enrichment, fuel fabrication and spent fuel reprocessing plants to the Community. This creates the condition of a gradual accession of Iran and Israel to the Community.]*

90- Any Treaty of Association signed by the Community will be reviewed by the Commission and Parliament before being signed, after approval by the Council at unanimity

## **APPENDIX TO THE TREATY**

### **DEFINITION OF TECHNICAL TERMS**

91- “source and fissionable materials” is defined in reference to article XX of the Statute of the IAEA

92- By “highly sensitive fissionable materials” it is meant:

- plutonium of any isotopic composition except plutonium that contains 80 percent or more plutonium-238
- uranium containing uranium-235 and/or uranium-233 in a weighted concentration equivalent to or greater than 20 percent uranium-235
- neptunium-237 and americium-241 and -243, and any other fissionable isotope suitable for the manufacture of nuclear weapons
- materials containing any combination of the foregoing

### **DIPLOMATIC STATUS OF THE REPRESENTATIVES OF THE COMMUNITY**

93- Officials of the Community will be granted the following special status by the Member-States of the Community:

- No administrative or other restriction shall be imposed on the free movement of member of the Commission, Parliament and Court traveling to or from the location of their institution.
- Members of the Commission, Parliament and Court shall, in respect of customs and exchange control, be accorded: by their own government, the same facilities as those accorded to senior officials traveling on official mission; by the government of other Member-States, the same facilities as those accorded to representatives of foreign governments on official mission
- Members of the Commission, Parliament and Court shall not be subject to any form of inquiry, detention, or legal proceedings in respect of opinions expressed or votes cast by them in the performance of their duties
- The Judges of the Court shall be immune from legal proceedings, and after they have ceased to hold office, they shall continue to enjoy immunity in respect to acts performed by them in their official capacity, including words spoken or written
- For their official communications and the transmission of all their documents, the institutions of the Community shall enjoy in the territory of each Member-State the treatment accorded by that state to diplomatic missions

A proposal with comments

- Official correspondence and official communications of the institutions of the Community shall not be subject to censorship
- The premises and buildings of the Community shall be inviolable, and exempt from search, confiscation or expropriation
- Members of the Commission, Parliament and Court shall be exempt from national taxes on salaries, wages and emoluments paid by the Community
- The Community shall be exempt from all customs duties, prohibitions and restrictions on imports and exports in respect of articles intended for its official uses and for its publications
- The Community, its assets, revenues and other property shall be exempt from all direct taxes
- The Member-State in whose territory the Community has its seat shall accord the customary diplomatic immunities to missions of third countries accredited to the Community

