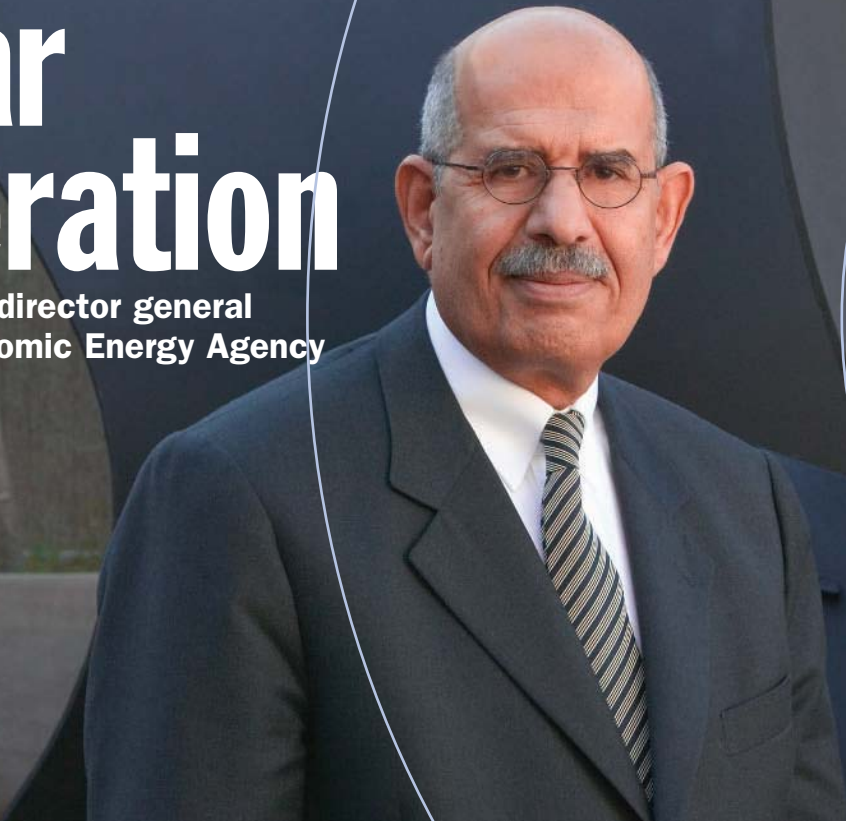


Nuclear Proliferation

A discussion with the director general of the International Atomic Energy Agency



MOHAMED ELBARADEI, director general of the International Atomic Energy Agency (IAEA), came to Stanford University for two days of discussions with students, faculty, and visitors in early November. His visit was cosponsored by the law school. As head of the IAEA, ElBaradei enforces provisions of The Treaty on the Non-Proliferation of Nuclear Weapons and related nuclear arms control agreements. It was the IAEA that conducted U.N.-mandated inspections of Iraq before the U.S. invasion, and that attempted to monitor North Korea's nuclear program before it was expelled from that country in 2002. Following a speech, ElBaradei sat down to talk with Allen S. Weiner '89, associate professor of law (teaching) and Warren Christopher Professor of the Practice of International Law and Diplomacy.

Weiner: Lee Feinstein and Anne-Marie Slaughter, in an article called "A Duty to Prevent," argued that the international community has a legal obligation to prevent states from acquiring nuclear weapons, but that this obligation should apply only with respect to certain states. The states aren't named, but they focus on those that, while avoiding formal breach of the non-proliferation treaty, have continued to pursue the nuclear option and that have repressive forms of government where efforts to pursue nuclear weapons are not subject to democratic checks. Feinstein's view is that we shouldn't treat Iran the same way that we treat, say, Sweden. What is your view about the viability of a set of international legal rules that would treat states differently?

ElBaradei: Well, the short answer is [that any such system is] absolutely nonviable. . . . I cannot see how on earth you would be able to say Sweden would be treated differently from country X or Y or Z, unless there are objective conditions for such differentiation. If countries are similarly situated, if countries are sovereign, if their behavior is exactly the same, I cannot say that because they speak Swedish [in one] and Farsi [in the other], I will treat them differently. It just would not work. In fact, it would reinforce the perception of a schism based on certain superiority, which we are trying very hard to avoid. I would agree that there is of course a duty to prevent [the] spread of nuclear weapons, but the duty to prevent [applies] to all. . . . A system that's

saying “We are the good guys,” or “We are the early birds. We can eat the worm, but nobody else,” is not sustainable. It could have been possible 10, 20, 30 years ago. What we have seen now . . . [is that] the technology is out. [We have to create a] fact-based system. And that system has to be saying that we are all going to destroy ourselves if we continue on that path. We are all going to honor the commitment we entered into in 1970 . . . to move toward nuclear disarmament. We might not be able to do it today, but we certainly need to demonstrate commitment and we certainly need to destroy some of the 30,000 warheads that we have. We certainly need to make sure that we do not develop new nuclear weapons. . . . Then we have the moral authority to hit hard on North Korea, on Iraq, on whoever is violating the rules. But you cannot . . . dangle the cigarette from your mouth and tell everybody else not to smoke. It is not doable.

Weiner: Many people perceive that the retention of substantial nuclear arsenals by countries that already had them when the nuclear non-proliferation treaty was signed, and the development of new technologies in some countries, is one of the causes for the persistent proliferation efforts. But aren't regional conflicts, like those in the Middle East and between India and Pakistan, a more prominent cause of proliferation? And if those are the primary causes, do we really think that accelerating nuclear disarmament efforts among the permanent five states would help?

EI Baradei: It would help, but I agree with you, that it is not the primary reason for proliferation efforts. The primary reasons for proliferation efforts are regional insecurity and instability. If you look around, where do you see [the] most proliferation efforts? It's the Middle East, it's northeast Asia, [the] Korean peninsula, and the Indian subcontinent—areas where you have chronic disputes that have been festering for decades. Not in Scandinavia. We're not worried about proliferation efforts in Scandinavia, but ask yourself why. It's not that the Swedes are inherently superior. The Swedes are not threatened by the Finns, while Israel probably feels threatened by its neighbors. Iran feels maybe threatened by its neighbors. North Korea feels threatened by its neighbors. Whether you agree or disagree with the sense of insecurity, there is a sense of insecurity you have to address. Why do you have a sense of insecurity? Again, it could be some of these conflicts. It could be the oppressive government you have. It could be the denial of human rights. It could be the schism between the rich and the poor. In all these parts of the world, people are not able to express their views through the ballot box. They have governments that are repressive, and they feel a sense of global injustice because of the

conflict that does not want to go away. These are really the drivers for proliferation efforts. . . . But we live in an environment, still, where nuclear power is perceived to be a source of power, a source of prestige, and ultimately a source of deterrence. It is not without notice that the five permanent members of the Security Council are the five nuclear weapon states. There is an environment that, if you have a nuclear weapon, you are treated differently. North Korea has, whether we like it or not, been treated differently from Iraq. I hope that's not because they have a nuclear deterrent, but that's part of it, let us face it.

Weiner: Under the traditional view of international law, states are not allowed to use force in self-defense until an armed attack occurs. That's the formulation under Article 51 of the U.N. Charter. There is, however, an older, customary law notion based on the *Caroline* case, which many people feel now is the proper way to interpret the U.N. Charter, that would allow states to act in anticipation of attack. In view of the proliferation of nuclear weapons, do we need to adjust the *Caroline* standard to take into account the gravity of the risk of nuclear attack?

EI Baradei: You cannot interpret Article 51 of the Charter in a conventional way, in the Webster definition, that, “I have to wait for a missile with a nuclear warhead coming over the Empire State before I act.” . . . In 1945, that meant probably armed vehicles crossing the border, but I can't obviously do that [today. The question becomes] how to adjust the rule without really making it a recipe for every country to say, “We can anticipate an armed attack, and therefore we will have to prevent it.” . . . You definitely do not want to give that right to every single country to exercise unilaterally, because then it's a recipe for a disaster. . . . I would authorize, or I would see as legitimate, certain cases of preemption, but it has to be collective preemption. It has to be preemption authorized by the Security Council. . . . I personally believe, unless I see an imminent danger of a possible aggression using weapons of mass destruction, I should try every possible way, diplomacy and verification. . . . If it doesn't work, if the use of force is the only and the best alternative, and if the international community decides that way, we should go for it. Obviously there will be extreme cases when countries will have to rely on unilateral defense, when they might not be able even to wait for the Security Council to make a decision. But I'm also saying at the same time that [the] Security Council needs to organize itself in different ways. [The] Security Council has become quite impotent in many situations, and it needs really to take its responsibility seriously. ■