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WMD Crisis: Law Instead of Lawless Self-Help

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Introduction: Why Compliance Procedures are Important

The proliferation of weapons of mass destruction (WMD) is a pivotal danger for global security. Presently, acute crises exist concerning the North Korean and the Iranian nuclear weapons programs. Apart from the risks in a world where an increasing number of states would possess WMD, the danger of terrorists acquiring such weapons is also more and more discussed. Al Qaeda has explicitly expressed interest in such weapons. State proliferation increases the number of sites where terrorists could get access to weapons or weapons material. To minimize both risks, the international regimes for the proliferation and disarmament of WMD must be strengthened. It is an error to state that these regimes are useless against terrorism: In obliging states parties to prevent proliferation, the regimes impose the duty to take measures to install strict measures to prevent unauthorised access to, and transfer of, weapons, materials and related equipment and technologies. This undertaking helps to raise the barrier to terrorist access as well. Strengthening the regimes is therefore utterly advisable in the present risk and threat environment.

The stability of the regimes hinges on the vast majority of their members abiding by, and actively supporting, their rules. Stability would erode in the absence of reliable procedures to deal with compliance problems, notably serious breaches of the treaties. The regimes themselves contain procedures on which better ones can and must be built; in their present form, they are not good enough to do their job. The issue was addressed, but not solved satisfactorily by the UN Secretary General's High Level Panel on Threats, Challenges and Change.[1] If the status quo persists, the unruly practice of unilateral pre-emption or prevention will dominate. The consequences were and are to be visited in Iraq. To provide an alternative, it is necessary to develop internationally accepted, legal procedures. Broad participation in, and standardisation of decision-making processes makes it more probable that all available

[1] *A More Secure World: Our Shared Responsibility*. Report of the Secretary-General's High-Level Panel on Threats, Challenges and Change, New York, United Nations 2004

information and perspectives will contribute to determine the response to a compliance crisis, and that the quality of related decisions will rise.

Why Do States Breach WMD-Related Treaties

Non-compliance problems provoke all too quickly considerations about military counterproliferation operations. Such actions will inevitably kill innocents, whatever efforts are taken to minimize collateral damage. For that reason, they need watertight justification. Only if an acute, deadly danger emanates from a non-compliance case may it be justified to deliberate about military countermeasures in the first place.

Many non-compliance cases are relatively trivial (such as not concluding a safeguards agreement with the IAEA when no nuclear activities are conducted in an NPT non-nuclear weapon state). But even in serious cases, a threat to peace and international security is not rooted simply in the destructive potential of the weapons themselves; rather, the threat level is crucially dependent on the motivations and intentions of the perpetrator. If a government has no intent to use the new weapons except in extreme situations where the national survival is at stake – that is, in an existential deterrent mode – this is a much less dangerous situation than if WMD are meant to be instruments of an aggressive external policy.

The most frequent proliferation motive is national security. Particularly states in conflict-ridden regions see WMD as an indispensable deterrent – that is as the only instrument to ensure the prevention of all sorts of war and aggression; this is clearly a defensive motive. A second reason to proliferate is the supposed gain in status. Since this implies no intent at all to use the weapons, but just to have them and boast their possession for status gains, no offensive motivations are connected to the act of proliferation.

While proliferation for security or status does not imply an acute risk of intentional use, they still can engender risky „chain reactions“: they may instigate other countries that feel threatened by the new WMD possessor because they misread its motivations, or because they fear a relative loss of status, to start their own WMD programs. Such a spread may contain the risk of unwanted escalation to war and, eventually, WMD use. In addition, new sites of access are offered to non-state actors.

An immediate danger to international peace and security must only be registered if the acquisition of WMD coincides with aggressive political designs, as in Iraq in 1990. Combined with that motive, the possession of WMD enhances significantly the probability of their employment.

These three types of motivation require different responses by the international community in non-compliance crises. Towards a state whose actions are exclusively driven by defensive security concerns, employment of military force is counterproductive and illegitimate. Rather, the security environment of such a state must be improved with a view to eliminate its perceived need for weapons of mass destruction as a deterrent, and thus to renounce anew their development, production and possession. Should an effort to reshape the state's security situation remain unsuccessful, the international community is well advised to accept, though with regrets, the new situation and to do its best to contain the negative consequences rather than to engage in a highly risky and costly war for disarming that state. The objective of non-proliferation is not worth the inescapable loss of human life in a war for enforced compliance if the proliferation act is caused by defensive security motivations, and its consequences can be controlled by security guarantees to the neighbours of the new WMD possessor.

The status motivation deserves a slightly different assessment, but leads largely to the same practical reasoning. Striving for status contains an element of irrationality, which makes it slightly more risky than a pure defense motivation. Nevertheless, if the desire to acquire WMD could be neutralised by alternative ways to gain status (recognition; consultation on important international issues; a permanent seat in the Security Council), such steps should be taken. (It is one of the major follies of the last quarter of a century, and a certain proof for the utter immaturity of the permanent five members of the Security Council to provide good governance at global level that India is a hopeful candidate for a permanent seat only after its nuclear tests; it would have been much better to offer the permanent seat before 1998 on the condition that India refrains from becoming a nuclear-weapon state). Rewarding the proliferator with a status gain, though, is a risky gamble as it may stimulate emulation by other dissatisfied and ambitious states. If this risk is deemed too large, the status-seeking proliferator should be subjected to sanctions that hurt. But even in this case, military intervention looks disproportionate compared to the risks that the proliferation act poses.

WMD in the hands of an aggressive state is a different matter. In a crisis that enhances the probability of the use of these weapons, the danger to the neighbourhood and the international community may become so large that military measures are justified if the prospects of their success are reasonably good, and if diplomatic means to solve the problems have been exhausted. No general rule can be established, though; each single case requires the thorough analysis by the Security Council (see below).

Requirements for compliance procedures: Forensics and politics

Compliance politics consists to a large degree of forensic procedures. For that reason, they show certain parallels to juridical trials despite their principally political character. The first question that must be answered is if there is a breach of the treaty in the first place. To provide that answer, evidence must be collected and evaluated. International verification as well as intelligence helps in this endeavour. However, either source of information is not without flaws; either has to cope with attempts at concealing and deceiving, either is subject to the possibility of error.

This ambiguity provides opportunity for political games. In jurisdiction rules for trials are constructed with a view to facilitate a judgement as impartial as possible. For WMD non-compliance forensics, rule-guided procedures are equally necessary for containing the damaging effects of political interest games.

If the assessment of available evidence has resulted in the finding that a serious case of non-compliance exists, the next necessary step must be the inquiry into the motivation that has caused the deviant behaviour. One has to look at the past behaviour of the rule-breaker, his security situation and his regional or global ambitions. One has also to check the previous use of military means to achieve political ends. This inquiry involves very difficult political judgements. National idiosyncrasies and prejudices must not be allowed to enter these considerations and all available and essential facts must be included in the deliberations. An independent institution charged with this task could render invaluable service in this phase.

Some may object that motivations cannot be assessed, as intrusion into the brains of decision-makers is impossible. This might be true for social-scientific purposes. However, we work quite frequently with assumptions about other peoples' intentions. Notably in criminal law

trials they help to distinguish between acts committed by intention, affect or negligence and are thereby decisive for determining the type and gravity of criminal acts.

Finally, the response to the non-compliance case must be decided upon. It depends on the degree of threat, which, in turn, hinges on the technical maturity of the WMD program and on the defensiveness or aggressiveness of the intentions of the perpetrator. Only if the immediate risk of using these weapons is seen as high, debates about military pre-emption can be seriously considered. Their prospect of success has to enter the deliberations as well as the criterion of proportionality.

This differentiation is absolutely necessary to enhance the prospects for a successful response. A state with a "paranoid" threat perception pushing it towards WMD is not likely to surrender under the pressure of economic sanctions. A proliferator striving for enhanced status will probably not be persuaded by security guarantees. A would-be WMD state in economic misery might be more open to economic incentives than to promises of a higher status. Moreover, the effects of the international response on third parties must be taken into account. When concessions to the perpetrator provoke envy and emulation of rule-breaking behaviour, when containment of the proliferator cannot be guaranteed, and thereby the security of its neighbours is in jeopardy, or when threats of pre-emptive strikes engender a panic in the region concerned, then the decision for the respective answer was wrong and must be corrected promptly. All these considerations prove how carefully the individual case must be scrutinised to come up with an adequate response.

Requirements for Compliance Procedures: Justice and Truth

Compliance procedures have a moral dimension. This sounds counterintuitive, as international politics are usually, but wrongly regarded as a moral-free dimension. And yet, without moral considerations, the drive to ostracise WMD would probably not have made the progress it has made until today. Justice, fairness and truth are universal values that cut across all cultures, however differently they might be understood in detail. Neglecting them undermines the willingness of many to support measures against non-compliant states. Equal standards applied to all actors is an essential principle of justice. Differences in responding to the same type and degree of rule breaking are hard to justify and to accept. However, differences might be justified if they take into account different degrees of risks and

(see above) to differences in the motivations and intentions of proliferators. Variations in response can then be in the interest of peace and international security and of maintaining and strengthening the non-proliferation regimes. If, to the contrary, they are to be traced back simply to patterns of sympathy and antipathy, prejudices, and national interests they undermine regime legitimacy.

A different dimension of justice relates to the balance of rights and duties within the regimes. The Nuclear Non-Proliferation Treaty (NPT) contains asymmetrical undertakings for nuclear weapon states and non-nuclear weapon states, respectively. The latter's' duties are fixed with great precision and consequence, and are duly verified, while the nuclear powers bear only vague and unverified disarmament commitments. This inequality could be tolerable if only the nuclear haves had made credible efforts to fulfil their promises. This is pathetically not the case. The fact that the five official nuclear-weapon states under the NPT (those that have conducted nuclear tests before Jan. 1, 1967, as the Treaty spells out) are, in their capacity as permanent members of the Security Council, at the same times the guardians of the Treaty and bear the main responsibility to deal with cases of non-compliance is thus the equivalent of chronic alcoholics enforcing abstention for others. This inequality not only of rights and duties, but of real implementation of duties, undermines the legitimacy of, and support for, the NPT.

Fairness means procedural justice in terms of participation rights: All those states affected by a decision on responding to non-compliance must be granted some degree of involvement in decision-making, all relevant aspects, opinions and interests must be represented. To achieve this, the P-5 should voluntarily constrain the pursuit of their national interests in those matters. Doubts in their goodwill to achieve a just and appropriate solution to the problem detract from the credibility of the Security Council as arbiter over peace and war and, consequently, from the reputation of the regimes for stopping the spread of WMD. In this respect, the Iraq war was an unmitigated disaster, and the unrepentant attitude of the war-makers even after their primary rationale for military intervention - the alleged WMD stocks and programs of Iraq - proved absolutely wrong is not helpful at all (nor is the re-election of the main four pro-war governments, Bush, Blair, Fogh-Rasmussen, and Howard).

The country accused of breaking the rules must have an opportunity for exonerating itself. Likewise, the interests of its neighbours must be taken into account: they would be the ones to

feel the consequences of armed conflict immediately and forcefully. Since war - in which the use of WMD cannot be excluded - concerns eventually the whole international community, decision-making must offer opportunities for broad participation. Open sessions of the Security Council and full and broad debate in the General Assembly are useful instruments to provide that opportunity. Of course, the formal authority for taking the decision rests with the Security Council.

Decision-Making Procedures in the WMD Regimes

In the NPT, the International Atomic Energy Agency (IAEA) is charged with verifying compliance of the non-nuclear weapon states with their undertakings. The Agency's capabilities to detect undeclared activities have been remarkably strengthened through the Additional Protocol. This document affords inspectors enhanced claims to obtain information and access to undeclared sites. If they find indications of a violation of the safeguards agreement they will report to the IAEA Governing Board. The Board decides with its majority whether there is indeed a violation; however, by established custom, the Board seeks to establish consensus for all its decisions. According to the IAEA's Statute, Art. XII, C, cases of non-compliance shall be reported to all IAEA members, to the UN Security Council, and to the UN General Assembly for further deliberation and decision.

The Chemical Weapons Convention (CWC) charges the Organisation for the Prohibition of Chemical Weapons (OPCW) with dealing with non-compliance cases. The OPCW Secretariat reports on the findings of its inspectors to the Executive Council and the Conference of States Parties. These two bodies then decide about the further proceeding. As an instrument in cases of suspected non-compliance, the CWC contains the option of challenge inspections: Every state party suspicious of another state's activities can request such an inspection. Only a three-quarters majority in the Executive Council can stop the inspection from happening. The timing of the inspection is devised in a way as to make it virtually impossible to the inspected state to destroy or conceal evidence without traces of such actions being detected. If a breach of the CWC is discovered, the Conference of States Parties decides upon sanctions, and the case is forwarded to the UN Security Council.

The Draft Protocol to the Biological Weapons Convention included a similar procedure. Since it was rejected by the United States, the parties to the BWC are thrown back to the original

instruments contained in the Convention. Art. VI of the convention authorises states parties to turn directly to the UN Security Council if they suspect a breach of the rules by another member and are not satisfied by the results of a bilateral clarification effort.
The UN Secretary General has authority of his own, through a Security Council resolution, to inquire into alleged violations of the Geneva Protocol, that is, the supposed use of biological (and chemical) weapons. The "mechanism" available to him for fulfilling this role consists only of an aged list of experts on whom he could draw, and of a list of laboratories, which would help him in analysing whatever samples are drawn in the context of such an inquiry.

The connection between the treaty regime and the Security Council is regulated for the NPT and the CWC: the expert organisation (IAEA and OPCW, respectively) procures and evaluates the technical data gained during inspections and collected in other ways (e.g. through commercial satellites, open sources, or member information). This contains the possibility for political abuse in the Security Council. However, the procedure within the Council itself leaves much to be desired. The forensic character of the whole issue does not really shape the form of the Council's proceedings: in these very special issues, requirements for decision-making are, in fact, different from the usual bargaining about the wording of resolutions.

The biological weapons regime is additionally handicapped by the lack of an interim step between the bilateral consultation between suspecting and suspected state and the serious move to the Security Council. The missing expert organisation to administer the Convention means that no routine procedures are available, and no trained cadre of technical specialists can scrutinise evidence before the case enters the politically charged arena of Security Council diplomats. The aged "mechanism" related to the Geneva protocol is weak and insufficient and certainly no substitute for the lacking expert organisation.

The Role of the United Nations

The Security Council is the central body for enforcing regime rules. All decisions on non-compliance imply a possible threat to peace and international security and can, theoretically, result in the mandated use of force. Since this goes beyond self-defense, only the Security Council disposes of the legal authority, to authorise military sanctions against rule-breakers.

The General Assembly shares with the Council the responsibility for peace and international security, but in a more deliberative rather than decision-making mode. It can debate WMD issues and situations without pre-empting the decision prerogatives of the Security Council. According to Art. 10.1 of the NPT; a state withdrawing from the Treaty must explain its reasons not only to the Council, but also to the members of the General Assembly which can, if it so desires, debate the issue. In the CWC, the Executive Council reports on non-compliance not only to the Council, but to the Assembly as well. According to these treaty procedures, both main UN bodies are involved in non-compliance cases.

The third pillar of the UN system, the Secretary-General, could well play a more active role than in the past on the basis of Art. 99 of the UN Charter. This article gives the SG the power to bring any question before the Council that, in his view, could threaten peace and international security. This could be the case if the Security Council ignores a case of serious non-compliance, or the SG disposes of information not available to Council members. Presently, the SG would have difficulties implementing such a more active roles since his organisation is lacking the necessary technical expertise to evaluate related information.

Dealing with Non-compliance: The UNSC Record

The UNSC's record so far in handling non-compliance crises cannot be called satisfactory. When North Korea declared its withdrawal from the NPT, the Council did not even take any action even though the Democratic People's Republic had violated its undertakings under the Framework Agreement of 1994 that had laid to rest - or so we thought - the last crisis concerning Pyongyang’s nuclear program. This passivity is unexplainable in Treaty terms, since the procedure following Art. X, 1 of the NPT requires that the withdrawing state explain its reasons to all other States Parties and to the Security Council. The reasons must be related to the substance matter of the treaty and concern supreme state interests. The duty to inform implies, of course, that the body reported to could or should take up the issue and screen the reasons given for their plausibility: are there really circumstances impacting on North Korean security that would justify such a grave step? Furthermore, the Council should have determined if North Korea had abused its membership in the NPT to cover illicit activities and to obtain materials, equipment and technology in bad faith for prohibited weapons purposes. Finally, the Council should have decided if parties not in good standing with the Treaty are entitled at all to make use of the withdrawal clause.

Instead, Beijing refused to debate the matter in the Council in order to spare her client possible sanctions, which are viewed by China as counter-productive and detrimental to her own interests. The United States, in contrast, did not want to dispute another country's reasons to withdraw from a treaty as Washington reserves the right to disentangle itself from given legal commitments and does not desire anybody to question the reasoning behind its withdrawal; hence, the Americans did not want to create a precedence.

In the case of Iraq 2002/3, the case is slightly different; not the universal treaties were at stake, but Iraq's obligations under the armistice resolution UNSC 687 of 1991. In the second half of the nineties, the Security Council virtually abandoned its active role because it lost its unity. For political and economic reasons, France and Russia turned against pressuring Baghdad into better cooperation with UNSCOM, to force Saddam Hussein to admit its inspectors back into his country, or to grant the successor organisation, UNMOVIC the requested access. The US and the UK, to the contrary, insisted on prolonging sanctions against Iraq that were hitting the population much more than the regime, hoping to produce a regime change in this way. These two countries were also willing to enforce UNSC 687 unilaterally with military means.

The situation appeared to improve in the year 2002. Impressed by the mounting military build-up of the United States and Britain, Iraq grudgingly agreed to renewed inspections. UNMOVIC reported to the UNSC in brief intervals; the Council upheld the pressure on Baghdad through precise requirements. This system worked. The result of the inspection - no WMD and no related programs - turned out to be correct, as much more personnel-intensive inspection with completely unlimited access confirmed after the war. Over time, the Iraqi readiness to co-operate improved incrementally. At the beginning of March, UNMOVIC and the IAEA presented a plan to the Council, which promised to resolve the still open questions in a few months. Given this situation, the vast majority of Council members deemed military action useless and disproportionate. The majority thus acted quite sensibly. However, decision-making in Washington and London followed a different logic: There, the leadership decided, on the basis of distorted and false intelligence, to go to war, against the rules of international law.

The procedural insufficiency of the UNSC for this type of deliberation was revealed on Feb. 2, 2003 when then US Secretary of State Colin Powell presented to the Council US "evidence". After his impressive multimedia show, the Council did not at all discuss and scrutinise the information just presented, but the other foreign ministers just read their prepared statement (which had no relation whatsoever to Powell's allegations) and dispersed. The impact upon the US public (the true addressee of the Secretary of State's presentation) was devastating: public opinion rushed to support war without a UNSC mandate.

In the present efforts to cope with the Iranian nuclear crisis, the Security Council functions as "background threat instrument" - the possibility that a failure of the EU-3 negotiations with Teheran could open the spectre of sanctions is an important bargaining chip for the Europeans in these talks. Besides these four-party-talks, the IAEA Board of Governors is the forum where crisis diplomacy is taking place. The European countries want to persuade Iran to renounce its nuclear fuel cycle activities, or to postpone them indefinitely, by offering a package of incentives. Indeed, it could make sense not to deliberate the case in the Council for the time being to keep the possibility open for a peaceful diplomatic solution. But it is strange that the Security Council should not even take note of the situation, after the IAEA Board of Governors has determined a violation by Iran of its NPT safeguards agreement with the Agency. Under these circumstances, having the case on the UNSC agenda just to note the interest of the Council would make sense and should be the routine for dealing with all these cases (including, for example, the findings by the IAEA on South Korea and Egypt): Such a routine signals the seriousness of the situation and gives incentives to the state in question to do its best for a smooth and prompt solution; otherwise, one could expect, the Security Council might decide to make use of its prerogative and take active responsibility. The routine thus contains a warning without implying that the diplomatic game moves already from the level of regime diplomacy to Council action.

It is also noteworthy that the UNSC has never dealt with alleged violations of the CWC and the BWC. Despite numerous statements on non-compliance by certain states parties neither a challenge inspection within the regime with a consequent notification of the Council (CWC) nor an investigation through the Council itself has ever taken place. This is all the more curious as much of the suspicion emanates from Council members with the USA at the top. Finally, the UN Secretary General has been asked only in a very few cases to investigate alleged uses of the Geneva protocol (see below). But it is worth mentioning that this

instrument has at least been made use of - this should encourage more active consideration if and how the UNSG could be employed to fill the void in non-compliance procedures that the regimes and the Security Council have left.

The record is sobering: The Security Council has acted too rarely, in an outrageously selective manner, and inefficiently. When it was on a good way in the Iraqi crisis in 2002/03, it was pushed aside by the unilateral zeal of some of its members, whose acts rested, at best, on erroneous assessments and, at worst, on outright lies. Political interests and national idiosyncrasies stood in the way of an efficient procedure to deal with non-compliance. Better procedures could improve the prospects that the Security Council comes closer to the ideal of a good implementation of its duties in the future.

Institutional and Procedural Options

Principally, all cases of supposed non-compliance should be dealt with in a three-stage system. To be sure, the UN Charter authorises the Security Council to deal directly with all cases impacting upon peace and international security. However, where the international community has created specific regimes with particular rules to handle certain threats such as the proliferation of WMD, the Security Council should understand its own role as a subsidiary one: The procedures available at regime level should be exhausted first. Only if the instruments available at regime level prove insufficient to master the problem, and if the regimes convey the case to the Council, should the Council take over. A Security Council more pro-active than that would enhance the concerns by many UN members about an increasing imbalance between Council, Assembly, and Secretary-General in favour of the Council. The consequences for the legitimacy of UNSC decisions of these concerns are detrimental. But it is true that subsidiarity can only work when the regimes dispose of efficient instruments of crisis management, and if they make full and good use of these instruments. This has not at all been the rule in the past.

Stage One: Regime Procedures

In the routine procedures contained in the treaty regimes, related information is collected by the regime organisations. The executive bodies must then determine if a serious case of non-compliance exists, if the instruments available within the regime are sufficient to cope with this case, of if it should be transferred to UN level. Both IAEA and OPCW dispose of

comprehensive means of verification, complemented by member states' information and data available from public sources, including commercial satellite images.

For the BWC, there is the huge gap of a lacking treaty organisation. The Draft Protocol had contained sophisticated procedures to clarify supposed cases of non-compliance. This included the creation of an organisation charged with implementing these procedures. Without such an agency, the parties are thrown back to the meagre steps available in Arts. V and VI of the BWC. One possibility to fill the gap would be the installation of a technical analysis unit in the UN Department of Disarmament Affairs. It could absorb the bio-technical expertise available in the residues of UNMOVIC. Such a unit could offer the Security Council and the Secretary-General expertise for examining a non-compliance allegation. Drawing on a broader roster of experts can expand this expertise if need be.[2]

One further issue should be clarified: How to use synergies between the verification organisations (this would include the CTBTO). The exchange of data gathered through the various organisations could help to create quality assessment - just recall that the reprocessing of plutonium is a chemical process, or that radionuclides of interest to the IAEA could be picked up by the CTBTO monitoring system. Presently, the legal basis for such an exchange is insufficient. The organisations report to different treaty communities with varying membership, and their treaties do not authorise passing on information gained from verification activities. Adapting international law to the need of creating synergies is one incremental step to improve non-compliance assessment.

Stage Two: The Treaty Communities

While the Security Council is the ultimate guarantor of the treaty regimes, it cannot claim ownership over them. Their "shareholders" are the states parties. It is thus not admissible if the parties would give exclusive pride of place to the Council in all non-compliance cases from the outset. In this regard, it is most regrettable that review conferences of the various treaties have proven so far incapable of handling non-compliance cases, not least because the accused state could use the rule of consensus to prevent condemnation, but also because

[2] UN Advisory Board on Disarmament Matters, *Multilateral disarmament and non-proliferation regimes and the role of the United Nations: an evaluation*. Contribution of the Advisory Board on Disarmament Matters to the High-Level Panel on Threats, Challenges and Change, New York, New York, United Nations, DDA Occasional Paper 8, 2004

cleavages in the treaty communities, and false solidarity of some with the violators of rules obviated unity among the faithful parties.

During the preparatory process to the 2005 NPT Review Conference, Germany proposed to convene, in the case of a state withdrawing from the Treaty under Art. 10, 1, or in cases of grave non-compliance, an extraordinary conference of member states. The rules of such a conference should be different from those applied to review conferences in that they should avoid the possibility of a veto. For example, the credentials of the accused state could be automatically suspended; the state could fully participate in the deliberations, but without the right to vote. Alternatively, an extraordinary conference could, as a rule, adopt resolutions by qualified majority. The latter rule would not only exclude the veto by the accused state, but also a veto motivated by clientele relationships.

Such a conference would operate on the basis of evidence provided by the treaty organisation. If it determines a violation of the treaty, the aggrieved parties to the treaty in question are entitled to agree on an appropriate response. The suspension of economic or scientific collaboration in the sector concerned could be such an action. It is also conceivable that a farther-reaching economic embargo could be agreed. Such decisions would not be legally binding, but they would provide a powerful signal and hit the economic interests of the incriminated state massively.

In addition, they would be an effective hint to the Security Council. The condemnation or the acquittal of a state by the vast majority of the UN members (the case in all three regimes if the decision were taken with qualified majority) would be hard to ignore by the Council if it deliberates under Chapter VII. To opt against such a majority would require meticulous justification. Elaborate and substantial procedures in the context of the treaty regimes could thus have an important effect on the decision-making in the Council and contain the political voluntarism that may otherwise obtain among Council members.

Stage Three: The United Nations

At last, the Security Council is called upon to enter its own deliberations. It must take into account the findings on stages one and two, but it is not completely bound by them. In a

certain sense, it would act as a "court of appeal". Given past experiences, and the Iraqi disaster in particular, its procedures must be vastly improved.

First, rules for the submission of evidence should be established. The data and assessments provided by the treaty organisations must, of course, be taken into account. National intelligence information should enter the deliberations only if they are confirmed by a second, independent source. States can present information gained through national means, but - as in court trials, certain information, e.g. illegally gained evidence, must not be used in arriving at judgment - the Council could be obliged to ignore data provided by a single state without confirmation. All intelligence information should be subjected to an evaluation by the technical analysis unit proposed above.

Secondly, advocacy could be introduced. One state could pose as attorney, leading the case against the accused party; another state could work as lawyer for the defendant (who must, of course, also have the opportunity to respond to the accusations). These role-players need not to be members of the UNSC. If they are, they should be obliged to abstain in the final decision.

Thirdly, the Security Council must make efforts to understand motivations and intentions of the non-compliant state: the results of this assessment will eventually guide its response. It appears to be best to entrust this difficult task to an independent group of experts appointed by the Secretary-General. This group would ask the accused state and its neighbours for information to complement its own initiative. It would also screen intelligence provided by member states - under the same caveats that were proposed above for the Security Council's handling of such information.

The expert group would advise the UNSC when it deliberates threat assessment and how best to respond. The positions of the neighbours of the incriminated state would enter the deliberations as well as arguments originating in the General Assembly. On this broad basis, the Security Council would estimate the risks emerging from a breach of treaty obligations by the accused actor, with due regard for both the immediate consequences for the neighbourhood and the imitation stimulus for other states.

Eventually, the Security Council would have to agree on its response. The spectrum extends from toleration and positive incentives up to military operations. Risks and cost for the international community and the population concerned must be most carefully weighed. Regarding economic sanctions, advice by the International Monetary Fund, the World Bank and the UN Development Program could be helpful. Likewise, the probable consequences of military action should be forecasted as best as possible; war gaming and simulation are proven devices for that purpose. For this exercise, the Security Council would need some military expertise at its disposal.

Final Remark

Handling WMD non-compliance crises is one of the key issues of global security policy. It is decisive for whether international developments follow the path towards a cooperative international order guided by law or towards ever increasing unilateral self-help operations. So far, the international community has failed to come up with an efficient mechanism. It is high time to fill this void. Otherwise, the slow erosion or even the rapid breakdown of the treaty regimes will almost certainly ensue.

List of published studies and papers

All papers and studies are available as pdf-files at the Commission's website: www.wmdcommission.org

No 1 "Review of Recent Literature on WMD Arms Control, Disarmament and Non-Proliferation" by Stockholm International Peace Research Institute, May 2004

No 2 "Improvised Nuclear Devices and Nuclear Terrorism" by Charles D. Ferguson and William C. Potter, June 2004

No 3 "The Nuclear Landscape in 2004: Past Present and Future" by John Simpson, June 2004

No 4 "Reviving the Non-Proliferation Regime" by Jonathan Dean, June 2004

No 5 "Article IV of the NPT: Background, Problems, Some Prospects" by Lawrence Scheinman, June 2004

No 6 "Nuclear-Weapon-Free Zones: Still a Useful Disarmament and Non-Proliferation Tool?" by Scott Parrish and Jean du Preez, June 2004

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