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# Reviving the Non-Proliferation Regime

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**WMDC**

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## **Reviving the Non-Proliferation Regime**

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It is unnecessary to emphasize to members of the Commission that the non-proliferation regime has received a series of damaging blows over the past 15 years. These include the proliferation activities of pre-Gulf War Iraq, North Korea, India, Pakistan, Iran, Libya, and the nuclear contrabanding of Dr. A.Q. Khan. They are also reflected in Dr. ElBaradei's forthright statement that the IAEA, the chief verifying institution of the nuclear non-proliferation regime, failed to detect these developments in pre-Gulf-War Iraq, Iran, Libya and Pakistan, and in his statements that the IAEA is unlikely without major changes in the regime to detect future clandestine enrichment and reprocessing.

In the area of vertical proliferation, the United States has introduced a new weapons doctrine calling for preemptive use of nuclear weapons in the event of suspected development of WMD by other governments and for use of nuclear weapons against those using chemical or biological weapons or even in "unforeseen contingencies." The U.S. refused to resubmit the Comprehensive Test Ban Treaty for Senate ratification. It has begun the development of robust earth penetrating nuclear weapons, the laboratory study of mini-nukes, and cut back the preparation time for resumption of nuclear testing.

For their part, China, France, and Russia are all developing new nuclear warheads and delivery systems. Russia has relinquished its brief no-first-use policy and, like the U.S., has threatened to use nuclear weapons in the event that biological or chemical weapons are used against it. Beyond this, the main institutions of the non-proliferation regime, the Security Council and the inspection process, were heavily battered by U.S. criticism up to and after the beginning of the U.S.-UK military action against Iraq.

If the non-proliferation regime collapses, the result will be a proliferated world with up to 40 weapon states, a global cold war with 40 different participants, not only two, with incessant concern and alarms about weapons activity, and active trade in weapons to terrorists and criminals. The danger of actual use of nuclear weapons will increase. The influence of the U.S. and its military power to act against nuclear-armed adversaries will decline drastically, and the UN's capacity to make peace and carry out peacekeeping operations against nuclear-armed participants in conflicts will melt away. The world will become a violent jungle far more dangerous than at present.

I make this alarming but not exaggerated case because I hope the Commission will include in its report a cogent warning about the deteriorating state of the non-proliferation regime. Supporters of the NPT regime are often too cautious in their criticism of the present state of the regime for fear that critics will misinterpret their comments as evidence that the regime is on its last legs and will or should soon disappear. The constructive motives of this approach are clear, but it seems wrong: It is essential to present to the world the actual serious condition of the NPT regime, a condition which is the greatest single current threat to world security. If the regime experiences a second fifteen-year period like the past one, it will indeed be dead. The situation calls for decisive measures.

### Action on the Basic Problems

As long as the United States and the seven other countries known to have nuclear weapons – China, Russia, France, UK, India, Pakistan, and Israel – make no definitive moves to eliminate their nuclear arsenals, the main lesson to be drawn by others from their behavior is the actual fact of the matter, that the weapon states are convinced that possession of nuclear weapons is the final and decisive guarantee of their own national security. This position will continue as it has in the past to motivate others to seek nuclear weapons capability.

In spite of the evident difficulty of bringing the weapon state governments to make truly deep cuts in their nuclear arsenals, I hope the Commission's report will make this situation clear and that it will contain one or more suggestions on how to achieve some progress in this area.

One step which could be taken now, building on the evident concerns of the U.S. administration about nuclear proliferation, would be for the Secretary General of the UN, the U.S. administration, or the five NPT weapon states acting together, to invite all the other states with nuclear weapons to discuss current serious proliferation issues. If the Secretary General does not extend the invitation, he and also Dr. ElBaradei could also be invited to advise and observe the conference and to testify to others what has taken place there.

The format of this conference is important: To invite all states party to the NPT to such a conference would label this as an NPT occasion and probably cause India, Pakistan and Israel to decline to participate. Inviting all NPT members and India, Pakistan and Israel as observers would remove the latter three from the circle of those expected to undertake obligations. On the other hand, there is no practical criterion for inviting only a few constructive non-nuclear governments and not others. Bringing together the eight governments with nuclear weapons seems most practical. This approach would establish a circle different from that of NPT parties while leaving the

NPT intact. A broader framework for the proposed activity would be to seek to convene the Secretary General's proposed conference to deal with nuclear dangers. This approach would also avoid NPT complications, but this conference could be a much larger and more difficult enterprise.

The objective of the proposed conference could be to encourage all participants to undertake the full range of anti-proliferation measures described in Security Council Resolution 1540 of April 28, 2004. Perhaps the participants could also be persuaded to undertake a long-term obligation (without reference to the NPT) to move toward elimination of their nuclear weapons. This should not be impossible since all eight governments are on record in one form or other as supporting such commitments. Participants could also be asked to develop useful forms of transparency and information exchange, or some other obligation undertaken by all nuclear weapon states. Agreement that the group would reconvene, perhaps once a year, would be valuable. In addition to the intrinsic value of such commitments, the tactical purpose would be to gain the support of non-weapon states for desirable anti-proliferation measures like those described below.

#### Greater Use of the Security Council on Non-Proliferation Issues

Security Council resolution 1540 of April 28, 2004, could serve as a model for further Security Council action against proliferation.

This Security Council resolution has been severely criticized, especially by NGOs. The idea of the nuclear-armed permanent five Council members laying down the law for non-weapon states without even a reference to their own obligation to eliminate their nuclear weapons, as happened in the development of this resolution, is admittedly distasteful. Other criticisms are that the Security Council is taking on the character of a world legislature and undermining and replacing multilateral treaty forums to which all states have access.

These latter criticisms appear to miss the main point. The Security Council is the ultimate enforcing agency of the nonproliferation regime. The current state of that regime, with several cases of proliferation in progress, represents a threat to world security, a situation where, according to the Charter, the Council is entitled and obligated to act.

It marks real progress that all five permanent Council members, especially China, which has in the past been reluctant, share the same apprehensions and are willing to act together to counter present negative trends. Non-weapon states should take advantage of this cooperation. But they should also confront the weapon states with the requirement to reduce their nuclear weapons if the weapon states want the cooperation of non-weapon states.

The argument that, instead of the Security Council, decisions to act against proliferation should be made by a conference of all the NPT parties, is difficult to accept. Amending the NPT treaty is a process that could take years and risk destruction of the NPT itself through confrontation between states without nuclear weapons and the nuclear weapon states. Moreover, the position of the permanent five is not automatically decisive. The views of the non-permanent members of the Council, whose votes are needed for a majority, will serve as a corrective, as they have in the past.

### Suggested Measures

In addition to the proposal above for a conference of all states with nuclear weapons I suggest the following six specific measures for possible Security Council action:

1. Make permanent the Committee of the Security Council established in paragraph 4 of resolution 1540 and broaden its scope to become a proliferation monitoring group for all NBC weapons. Make UNMOVIC a permanent agency of the Security Council, subordinate to this Committee.
2. It could be useful for the Security Council to pass a resolution stating that the Council would be prepared to extend a guarantee for the security of the respective regions if otherwise adequate solutions are reached in the cases of North Korea and Iran. Such a resolution, if passed fairly soon, could serve as an inducement for both North Korea and Iran, both apprehensive over the prospect of outside attack, to reach a settlement.
3. As a deterrent to proliferation, the Security Council could be asked to agree in advance on a standard set of responses to possible future acts of proliferation by governments. These responses could follow the model of the non-proliferation program adopted by the European Union in its June 2003 meeting in Thessaloniki for application on a step by step basis – graduated economic sanctions, suspension of trade, suspension of land and sea travel, and coercive military action as a last step. This Council decision would be a preparatory move designed to place the Council's position on record in order to deter acts of proliferation and to prepare the Council itself to act in subsequent cases. Specific Council action would require subsequent Council decision in the individual case.

This procedure would present an alternative to preventive military action by an individual member state. It could span the gap between preemptive action against imminent danger as viewed by customary international law and the greatly expanded scope of imminent danger that would come from possible use of nuclear weapons, or possibly of chemical and biological weapons. It would provide some response to Secretary General Annan's concern in his September 23, 2003 speech that the UN may now be at a crossroad between unilateral and multinational action against proliferation. In practice, the proposed measure would require that the state urging Security Council

action present conclusive evidence for its concerns. But it would also require that the Security Council itself be prepared to decide on coercive measures if the earlier steps in the sequence were taken and were not effective.

4. It would be desirable for the Security Council to decide a resolution, based on the 1992 Council statement of heads of state and governments declaring proliferation a threat to international security, making it mandatory for all states parties to the NPT to accept the 1997 Additional Safeguards Protocol. The penalty for non-compliance could be a Security Council order to the Nuclear Suppliers Group and NPT member states prohibiting export of nuclear energy materials to the state in question.

This measure would give the status of a Chapter VII Security Council resolution to President Bush's proposal of February 11, 2004 that only states that have signed the Additional Protocol should "be allowed to import equipment for their civilian nuclear programs." President Bush proposed no binding enforcement measure for this possibly slow-acting suggestion, other than the willingness of the Nuclear Suppliers Group to cooperate in implementing it. This cooperation may not be readily forthcoming given the possibility of legal complaints based on the guarantee of access to nuclear energy in Article IV of the NPT.

5. The ease and speed of withdrawal from the Non-Proliferation Treaty in 90 days (Article X) has created the possibility that a state party to the treaty could amass all the installations and skills needed for nuclear weapons and then withdraw from the treaty and rapidly proceed to produce nuclear weapons. For these reasons, Dr. ElBaradei has proposed that the route to rapid withdrawal from the treaty be blocked.

To this end, it is suggested that the Security Council could decide a resolution under Chapter VII of the Charter, making the case that serious threats to international security would arise from sudden withdrawal from the NPT, and increasing the period for advance notice of withdrawal from 90 days to three years, creating a period during which the international community can enter into dialogue with the withdrawing state and seek to bring it to revise its decision.

It is sometimes said on this subject that, after a state like North Korea or Iran seeks to withdraw from NPT membership, the Security Council could effectively block the withdrawal by objecting that countries with unresolved transgressions against the NPT should not be permitted to withdraw from the Treaty until these issues were clarified. Well and good for Iran and possibly North Korea, but what if there were no known transgressions in the individual case and the world is confronted by sudden action from an unsuspected proliferator? The menace behind this possibility, though perhaps somewhat unrealistic as regards sudden action without any warning, causes the NPT regime to appear especially unreliable and fragile. The possibility of rapid withdrawal should be blocked for that reason.

6. President Bush has suggested a permanent freeze on the construction of new nuclear enrichment and reprocessing plants by those states which do not yet have them. He has asked the Nuclear Suppliers Group not to approve export of equipment that could be used for these purposes. Director General ElBaradei has on several occasions urged international control over all existing enrichment and reprocessing plants. Dr. ElBaradei's statements are extremely significant because they amount to statements by the head of the agency charged with implementing safeguards that NPT provisions are not adequate and must be supplemented by more far-reaching measures.

Many complicated issues are involved here: How would President Bush's proposed prohibition be received by non-weapon states guaranteed in Article IV of the NPT the "inalienable" right of access to nuclear technology? Who would provide nuclear fuel and remove waste from nuclear energy systems of the states prohibited from having enrichment or reprocessing plants -- reliably and at supportable prices? What would the international authority proposed by Dr. ElBaradei look like? Would it own the plants it controls? If not, who would own them? What would happen to the enrichment and reprocessing capability of the nuclear weapon states?

It is suggested that the Security Council should request the IAEA to develop an options paper giving a range of answers to questions like this, while soliciting the views of member states and independent experts on the subject, and should request the IAEA to complete the paper and submit it to the Council within 18 months. The international community should be able to hear comprehensive views on the possible options from an unbiased source, rather than waiting for the U.S. administration to put forward a proposal of its own following its own time schedule. Most solutions to this issue will involve very large international enterprises and will have great significance for the future of nuclear weapons, of nuclear energy, and of international cooperation. Productive discussion of the possibilities should begin soon.

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I take this opportunity to wish the Commission good luck and good insight in its essential task.

**List of published studies and papers**

All papers and studies are available as pdf-files at the Commission's website: [www.wmdcommission.org](http://www.wmdcommission.org)

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

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

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

**No 4** "Reviving the Non-Proliferation Regime" by Jonathan Dean

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

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

**No 7** "Making the Non-Proliferation Regime Universal" by Sverre Lodgaard

**No 8** "Practical Measures to Reduce the Risks Presented By Non-Strategic Nuclear Weapons" by William C. Potter and Nikolai Sokov

**No 9** "The Future of a Treaty Banning Fissile Material for Weapons Purposes: Is It Still Relevant?" by Jean du Preez

**No 10** "A Global Assessment of Nuclear Proliferation Threats" by Joseph Cirincione

**No 11** "Assessing Proposals on the International Nuclear Fuel Cycle" by Jon B. Wolfsthal

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